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SELECT COMMITTEE ON SUPERANNUATION

Reference: Taxation treatment of transfers from overseas superannuation funds

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SENATE
SELECT COMMITTEE ON SUPERANNUATION AND FINANCIAL SERVICES

Friday, 17 May 2002

Members: Senator Watson (*Chair*), Senator Sherry (*Deputy Chair*), Senators Allison, Buckland, Chapman, Hogg and Lightfoot

Senators in attendance: Senators Sherry and Watson

Terms of reference for the inquiry:

Taxation treatment of transfers from overseas superannuation funds

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Committee met at 9.04 a.m.

LATIMORE, Mr Leon, Assistant Director, Australian Taxation Office

MURRAY, Mr Nigel Patrick, Director, Superannuation, Australian Taxation Office

THOMAS, Mr Trevor John, Assistant Commissioner, Superannuation, Australian Taxation Office

CICCHINI, Mr Raphael, Manager, Superannuation Unit, Department of the Treasury

CHAIR—I declare open this public hearing of the Senate Select Committee on Superannuation. This hearing is part of the committee's inquiry into the way transfers from an overseas superannuation fund to an Australian regulated fund are taxed, particularly under section 27CAA of the Income Tax Assessment Act 1936. In March the committee issued a media statement announcing its inquiry and inviting submissions by 26 April. The inquiry was also advertised in the national newspapers on 5 and 6 April. The committee has been asked to report by 26 September 2002.

Superannuation is a form of long-term saving and investing which aims to provide income for people in their retirement. Tax concessions play a significant role in encouraging savings for retirement through superannuation. However, these incentives are limited. The laws feature a number of safeguards to ensure that the Commonwealth's revenues are not eroded by inappropriate access to tax concessions. Section 27CAA of the Income Tax Assessment Act 1936 is one such safeguard which taxes the growth of a foreign superannuation benefit as the income of an Australian resident in certain circumstances. The purpose of the committee's inquiry is to explore whether the appropriate balance has been reached in the enactment and the administration of this provision.

Today we will be taking evidence from the Treasury and the Australian Taxation Office, which are the Commonwealth departments responsible for the development, design and administration of our taxation laws, and superannuation industry organisations which represent the funds that are the trustees of these important assets. We will also be hearing from professional advisers, firms and associations who advise on the tax consequences of transactions involving superannuation. As well, we will hear from others who have a direct interest in all of these matters.

All witnesses who appear before the committee are protected by parliamentary privilege with respect to the evidence they give. This means that witnesses are given a broad protection from action arising from what is said. The Senate has the power to protect them from any action which disadvantages them on account of the evidence given before the committee. The committee prefers to conduct its hearings in public. However, if there are any matters which witnesses wish to discuss with the committee in private, we will consider that request.

I welcome our first witnesses this morning—the representatives from the Treasury and the Australian Taxation Office. Thank you very much for your submission. I invite you to make an opening statement.

Mr Cicchini—As you would be aware, the Treasury has made a submission in conjunction with the tax office. I want to make a couple of points on what we see as the key points in that submission. In essence, the submission describes a policy rationale for the measure. Section 27CAA is consistent with the principle that an Australian resident should be subject to Australian tax on income from all sources and with restricting Australian superannuation tax concessions to resident superannuation funds that comply with the Australian supervisory requirements. As such, only superannuation entitlements that have accumulated since the individual became an Australian resident are subject to Australian tax. This would generally be any investment earnings that have accrued over the period.

The general policy rationale behind that is, I repeat, that an Australian resident should be taxed on income from all sources. This is seen as a concession. The alternative would be to apply the foreign investment fund regime, which taxes the earnings as they accrue, and the Australian resident would be subject to tax on an annual basis on the investment earnings, even though they have never actually received them. When it was introduced in 1994, it was seen as a concession to the general principle. They are my general comments.

CHAIR—Does anyone else have anything to say?

Mr Thomas—I have nothing to add to that. We are happy to take questions.

CHAIR—Thank you very much. I think the committee would like a little clarification by way of an example of the interaction between FIF and 27CAA. Both can apply, but I understand there is a credit given under one regime for tax paid under the other. Is there any possibility of double taxation?

Mr Cicchini—I think the general comment would be that there is not an opportunity for double taxation on income that has already been assessed for payment of taxation, and the tax office can clarify that for you. Basically foreign investment fund rules apply generally to all Australian residents but these payments are excluded, so these funds held in overseas superannuation funds are excluded from the foreign investment fund rules. The interaction is minimal to the extent that if someone was perhaps subject to tax on a foreign superannuation fund, and they had not paid that tax, when they actually transferred the benefit to Australia they would be then taxed. I do not think they would be subject to tax under both regimes.

Mr Murray—That is correct. FIF is taxed as earnings on an accrual basis, so it would be on an annual basis if it were applied to you. 27CAA instead defers that tax, if you like, until when the payment is made from the fund. If a payment had already been taxed under FIF then 27CAA would not be applied in full—rather there would in effect be a credit to offset the fact that you have already paid FIF tax. If FIF tax has not been applied previously then 27CAA will apply in full and impose a tax at the time of payment.

CHAIR—So the credit would only apply in the year in which the money was transferred, I presume?

Mr Murray—Yes. If it has applied—they may have paid FIF for five years and then they make the payment—27CAA would then give them in effect a credit for those five years of FIF they have paid.

CHAIR—Lots of the concerns really arise from people who believe that the six-month time interval is not long enough because, by the time they meet all the regulatory requirements, the fund requirements and the inland revenue requirements in the UK and they make arrangements in Australia—and also it is fairly traumatic moving from one country to the other—by the time they get around to looking at their superannuation transfers six months just does not seem to be enough. Also there is the aspect of some mis-selling in the UK. The provisions do not appear to be widely understood by a number of the financial advisers. Would you like to comment on those issues?

Mr Cicchini—I guess the six-month rule is seen as a concession. I think prior to 1994 there was not a six-month rule and they had to pay basically straightaway, and I understand that part of the reason for amending the rules was to provide this window of opportunity. I guess the general view is that six months was determined at that time to be a long enough period of time. For example, if it were 12 months, it would be extending that concession. I guess the analogy is that if the money was transferred within six months then it begins to pay tax in the Australian environment whereas while it is overseas it does not, so the Australian resident is not paying tax on that. Our concern is, whether you make it six months or 12 months or two years, there will always be people who will fall outside that. It does not necessarily resolve the problem by extending it to 12 months.

Senator SHERRY—You may or may not know, but one of you may be aware, that in the UK there has been a huge problem associated with mis-selling, a consequence of which is that the industry has to pay back £11 billion to fund members, and this is still being sorted out. What would happen to a person—and there are literally hundreds of thousands of people in this category—who has left the UK, has come to settle in Australia and receives a payback as a consequence of this £11 billion settlement? If they have been living here for more than six months, how would they be treated if their pension fund in the UK has received compensation and then the money has to be transferred to them in Australia? What would happen there?

Mr Murray—I guess it would be a bit unclear, to be honest. I think it depends very much on exactly how that compensation is being paid and exactly what form that takes. The general principle is that once you are an Australian resident you are taxed on any earnings. I am not particularly clear on the exact workings of that payback arrangement you are talking about and I am therefore not clear whether earnings would be involved in that or whether it is just some other type of lump sum compensation payment.

Mr Thomas—If it is a capital amount, that would be the issue essentially, I think: what is the nature of that contribution that is paid to that member through the fund?

Senator SHERRY—You might take it on notice. I am not raising it as a minor technical matter because there are very big numbers involved.

Mr Thomas—There are practical issues.

Senator SHERRY—It is almost certain that some of the people—it might be a thousand—who are now living in Australia, and elsewhere for that matter, will be receiving very substantial repayments, and how that would be treated is the issue. In respect of the issue of the general six-month rule, we have had complaints and cases drawn to our attention where it has just not been

possible for the person to get the money in six months and it is beyond any blame that can be attributed to the individual. The fund has been less than reasonable in terms of transferring the money. How do you deal with circumstances like that? This is the fund in the UK.

Mr Thomas—Essentially, the law is the law and there is no flexibility built into the law. I think it is something that is undoubtedly a practical problem in some cases, and we have certainly had it drawn to our attention as well.

Senator SHERRY—You cannot blame these individuals. We have enough trouble struggling to understand Australian superannuation let alone overseas superannuation—and I am sure it is similar overseas. Most people do not understand the requirements and in many cases they are not even aware of this until they actually come to Australia. In this context, is there a Treasury officer in London? Apparently there was one based at Australia House who was available to give advice in this area—amongst other things obviously—and that matter has been drawn to our attention.

Mr Cicchini—I am not sure, to be honest. Treasury has a number of posts overseas and I cannot recall them all.

Senator SHERRY—I am not suggesting we should have a Treasury official in every overseas posting, but in the UK there are very substantial numbers and the removal of the officer has meant that there is not someone there directly available for advice. I have just one other point. The taxation of pension funds in the UK—are you familiar with the regime there?

Mr Thomas—No, I am not.

Senator SHERRY—My understanding is that you are not taxed on your pension fund in the UK at all.

Mr Thomas—I do not know.

Senator SHERRY—I just put this point to you: if you are not taxed on your fund in the UK or the rate is much lower than, say, in Australia, which is a concessional rate, did you think that would contribute to the concern in moving from an untaxed or lower tax environment, in terms of your pension fund, to an environment in Australia where pension funds are taxed, or at least taxed at a greater rate?

Mr Thomas—In making a decision on when to move moneys, the person would have to have regard for what the taxation regime is in Australia and the fact that they will be taxed on worldwide earnings while they are a resident of Australia. In fact they might have longer than six months to make a decision and undertake the process because the clock starts from when they become a resident of Australia for tax purposes. That is defined in the tax act but one of the principal provisions is more than half a year in Australia, continuously or broken, within a year. So they do have some time to consider their position if they are intending to become residents of Australia; they will have longer to look at their affairs and look at transferring the money across.

Senator SHERRY—On the six months issue, you have said that there is no flexibility. Do you believe that, where an individual can clearly show documentation et cetera that it is not their fault—that the pension fund and/or the adviser have been unreasonable and simply have not released the money and the individual has done everything that could reasonably be expected—there should be some flexibility in this area if they can show good cause for not having transferred the money within the six months?

Mr Thomas—I think that is an issue that the committee might like to consider and make recommendations on, and I am sure the government would consider that in due course.

Senator SHERRY—But I am just interested in whether you think that it is reasonable to have some flexibility.

Mr Thomas—I think that is a policy matter for government.

Senator SHERRY—Do you have flexibility in any other areas? With the GST you had a fair bit of discretion.

Mr Thomas—I am not familiar with what happens with the GST; thankfully I am confined to superannuation.

CHAIR—Could you give us a dollar amount on how much revenue is collected by virtue of section 27CAA?

Mr Cicchini—Treasury certainly does not have any information.

CHAIR—Tax?

Mr Murray—Unfortunately with the way this tax is paid and where it is collected, if you like, through the *TaxPack*, there are a number of other data information fields that go into that same box, so it is not actually spelt out separately. We do not have any data that specifically tells us how much tax is collected under 27CAA.

CHAIR—It has been suggested to us that relatively little tax is collected under this mechanism because neither Treasury nor the tax office have a means of identifying money that is transferred—superannuation money, in effect—and that a lot of it is just collected, paid in Australia and no tax is paid at all.

Mr Cicchini—The taxpayer has an obligation under the tax act to declare income.

CHAIR—Yes, he has got an obligation, but I put the point that has been put to us using other words: it is more honoured in the breach than in the observance.

Mr Murray—All we can say is that the legislation is based on self-assessments. In terms of 27CAA, I guess it has really only been in the last year or so, since the UK changed their legislation, that it has become a more significant issue. At this stage we do not have any information on the compliance.

CHAIR—Are you looking at ways whereby you can ensure that taxpayers who are resident in Australia and who have money transferred—particularly from the UK—include this money in their income?

Mr Murray—We are looking at making some educational materials more widely available so people are aware of their obligations. There is a draft taxation ruling related to this subject that is being prepared at the moment. We are trying to get more information out there so that individuals are aware of the obligations which do exist under the legislation.

CHAIR—Are you looking at including this information on migration papers, for example, to make it quite clear to people what their obligations are? Superannuation is becoming more globally acknowledged as a means of wealth accumulation.

Mr Murray—We have not got to the level of detail to ascertain exactly where the best place would be—

CHAIR—Perhaps it might be a good idea to look at that—putting it on information brochures or something to outline people's obligations in the same way that other departments outline obligations in relation to, say, quarantine matters.

Senator SHERRY—Before we go on, I would like to say that I really do find it a bit frustrating that we cannot get figures. It is not just in this area; it is in other areas of super taxation. Haven't you ever done some sort of representative survey of people who have moved from the UK—to determine, say, the level of compliance—that would give some indication of figures?

Mr Murray—No, not at this stage. As I said, the issue has really come to prominence only in the last year or so with the change to the UK laws, so it is not something we have looked at at this stage.

Senator SHERRY—It seems to me that you could have massive noncompliance in this area—

CHAIR—There is.

Senator SHERRY—but you just do not know. We are told people are just not declaring. You cannot tell us the revenue, you have not done a compliance survey—this is a sort of honour system, by the look of it. Do you have any liaison with pension funds to determine who is transferring out to Australia?

Mr Thomas—We are doing more analysis of contribution flows into funds now, from the data we collect across the industry. That may lead to some conclusions in this area, depending on aspects that we might pick up on in terms of large flows or contributions coming in. We periodically check significant differences in contributions from year to year and so on. That may come out of that sort of analysis, but it is not something that we have particularly focused on to date because it has not been a significant issue until recently, as Mr Murray has said.

CHAIR—When the changes were made to the UK rules, did you study them to ensure that, in terms of moneys that are released from UK funds—and it is not easy to get this; one reason for the time delays is that they are very careful in checking—you were satisfied that that checking

is sufficiently rigorous to ensure that when those payments are made out of a UK fund they go into none other than a regulated fund in Australia?

Mr Thomas—Essentially, that is a matter for the UK government to determine. It is their rules which specify that it has to be paid into a particular type of fund.

CHAIR—But, in a sense, if their rules for example do not touch on those issues, I would have thought that you would have had an interest in ensuring that there is a provision—because there is a lot of reciprocity in terms of international agreements and all those sorts of things—to ensure the tightness of funds to make sure the relevant jurisdiction collects the right amount of tax. I just want to make sure that, when these changes were made, you were happy that there were provisions over there to ensure that the moneys were paid into a relevant superannuation fund. I understand that, if moneys are paid out the other way from this side, you want to make sure they are paid into the equivalent of a regulated type superannuation fund.

Mr Cicchini—I think the difference here is that, when the moneys come to Australia, the only requirement for them to be paid to a fund is a UK requirement. In Australia it is treated as an undeducted member contribution. So, whilst in a retirement income policy we would obviously like more money to be paid into the superannuation system, Australia actually places no requirement on an individual to put that money into a superannuation fund.

CHAIR—This is obviously where the loophole is for people who are not aware of the law or who are aware of it but are not meeting their obligations, isn't it? I am suggesting various ways in which the whole thing can be tightened up to make sure the transfers do attract the right amount of tax. There are a number of aspects. I think we need to take a responsible attitude, because we want to make sure Australia gets its fair share of tax if that is what the law says.

Mr Cicchini—That is true, but I guess the point that I am making is that there is a tax liability there, whether it is paid into superannuation or whether it is paid by the individual. So that is one issue of the tax liability. There is no requirement in Australia for the money to be paid to a superannuation fund—that is a UK requirement. Anyone can bring an overseas investment into Australia and choose to pay it into a superannuation fund. This is a UK requirement—

CHAIR—Or build a new house with the proceeds.

Mr Cicchini—They could do that, too, except the UK will not let them put it into anything other than an Australian superannuation fund. It is not an Australian requirement.

Mr Thomas—Irrespective of the origin of the money or the destination in Australia, earnings by an Australian resident worldwide are taxed under the FIF regime. The question then is: does it qualify for the concession through 27CAA? The concession applies to particular types of funds and amounts, otherwise it is taxed broadly under the FIF regime.

Senator SHERRY—Could I make a suggestion? Would it be better, as part of the processing of a person coming from the UK to Australia, for there to be a requirement that they register their membership of a UK pension fund and provide that information to the Australian authorities before they are allowed to come to Australia?

Mr Cicchini—I am not quite sure what you are suggesting we ought to impose on an individual.

CHAIR—On their migrant application form, there is a question—

Mr Cicchini—On their application for what—residency? We are talking about people who may not become permanent residents; we are talking about people who become residents for tax purposes.

Senator SHERRY—But you could still require that on the application form.

Mr Cicchini—The application to transfer their money?

Senator SHERRY—No, the application to come to Australia.

Mr Thomas—The immigration form—the visa form.

Mr Cicchini—Visa requirements. What would that requirement be?

CHAIR—What do you have?

Senator SHERRY—As a visa requirement, you have to tell us whether you are a member of a UK pension fund and, if so, what the fund is. That would be very useful, I would have thought—actually getting that information before they come to Australia and the tax office being able to do that checking.

CHAIR—In fact, not necessarily a UK fund—any fund.

Senator SHERRY—Anyone; any country.

Mr Murray—There would no doubt be administrative issues around whether that would be an efficient and effective means of ensuring greater tax. There are also issues around the FIF regime, which is equivalent to 27CAA, and whether you would envisage extending that to all FIF regime investments overseas.

CHAIR—That is right.

Mr Murray—There would be a lot of data coming in and there would have to be some analysis of the costs and benefits of that.

Senator SHERRY—But it would also, I think, be useful to the individual applying to come to Australia. They would certainly ask themselves, or get some advice, about why this information is being required, and then get the advice about how they would be treated when they moved to Australia. It seems to me to be pretty basic. Anyway, you might have a discussion with Immigration about it.

CHAIR—Our colleague Senator Bishop is in the audience. It was partly Senator Bishop's initiative to draw this matter to our attention, and we thank him for his very worthwhile contribution. He raises a number of very interesting issues. Would you like to comment on his submission?

Mr Cicchini—I have not read his submission, Senator.

Mr Murray—Are there any issues in particular about his submission?

CHAIR—We are asking you to comment on it. We find it a little bit surprising because most witnesses read the submissions that are presented to committees, particularly Treasury.

Mr Cicchini—My apologies, but I have had other things to do as well this week.

Senator SHERRY—Haven't we all?

Mr Murray—I did read the senator's submission. It raises a number of issues—a lot of them were certainly raised—

CHAIR—We do not want you to take this on the run. Maybe you should take this on notice.

Senator SHERRY—It is a bit unfair if they have not read it.

CHAIR—I am a little bit disappointed that you are not in a position—

Mr Murray—I am in a position to discuss a few of the matters that are raised. He has four dot points in his submission for his key issues, one being the level of taxation paid on the benefits. The issue I believe he is discussing there is that under the 27CAA regime the tax that is imposed is at the individual's marginal rate, and he is suggesting that it could perhaps be at a different rate. That issue was considered when the legislation was initially introduced. At that stage, the belief was that the Australian tax concessions that are available for superannuation, whereby super is concessional tax, should only apply to tax that is accumulated within the regulated Australian environment, and that is why any amounts accumulated other than in that environment should be taxed at the individual's marginal rate. His second point is the apparent lack of policy rationale. I think Mr Cicchini from Treasury has already gone through that and explained the main key factors why this provision exists. It is consistent with the FIF regime that you should be taxed on your worldwide earnings.

CHAIR—What about that provision? The explanatory memorandum seems to be a little bit deficient in this area, because when you look back at the policy rationale, there appears to be fairly scant information provided to the legislature at the time.

Mr Murray—I cannot really comment on that. I was not involved in it.

CHAIR—That is what I say: not having read his submission, you cannot really give us the full rationale.

Mr Murray—I have not read the EM recently, but from memory there was some indication that the general principle was consistent with Australian tax concessions only being for superannuation accumulated in Australia. I believe that was mentioned in the EM, but I would have to check that.

CHAIR—Yes.

Mr Murray—But, as I said, I was not involved in that.

CHAIR—Perhaps it might be safer to take it on notice.

Mr Murray—Sure.

CHAIR—Thank you very much. I have another question in terms of maybe double tax or additional tax. Firstly, there is overseas tax in terms of when some of the money is transferred and then there is 27CAA on the accumulation component in Australia. That just raises the question that in some jurisdictions—maybe just not looking at the UK in isolation but at other jurisdictions—there is the possibility of two bites of the cherry. Is that right?

Mr Murray—Not that I believe. Generally, the tax act has a number of provisions that allow, in effect, foreign tax credits for any foreign tax paid when Australian tax is also applied. There are other provisions that ensure amounts will not be taxed twice. I guess they all reflect the general principle that there should not be double taxation, and we are not aware of any double taxation arising in these cases.

CHAIR—I am advised that when money is transferred between funds in the UK there is tax, and then again when it is transferred to Australia.

Mr Murray—When an amount is paid out of an overseas fund, if it is transferred to another fund, that does trigger 27CAA, so that would be applied then. If there is a later payment from the second fund into Australia, that would again trigger 27CAA, but there are provisions in the tax legislation that ensure that is not taxed twice. In effect, a credit is given for the tax already paid.

CHAIR—The tax is provided in terms of the first transfer?

Mr Murray—There is a provision in the Income Tax Assessment Act 1997 that generally provides, at section 6 subsection 25, that amounts will not be subject to double taxation—they will not be taxed twice—under the same provisions.

CHAIR—When you are looking at your policy rationale, you might like to address the issue of whether section 27AA is aimed at migrants coming to Australia or to stop Australian people moving super offshore, for example, to take advantage of the zero contributions and earnings taxes in the UK.

Mr Murray—The general policy rationale is simply that any resident of Australia, be they someone who has arrived as a migrant and become a resident or a normal otherwise Australian

resident, should be taxed on their worldwide earnings. It does not really differentiate between the two. Once you are an Australian resident for tax purposes, the rules apply.

CHAIR—You cannot see any unintended consequences?

Mr Murray—No, not in terms of those general principles.

CHAIR—We would like you to look at the possibility of an education or awareness program particularly to advise migrants as to the requirements of section 27CAA and Senator Sherry's suggestion that there also be something on the migration form or maybe even something on the citizenship form. I know there could well be a tax obligation on someone before they become a citizen, but at least you have a mechanism for probably picking some of these things up. Do you have any concluding remarks that you would like to make?

Senator SHERRY—Going back to the migration department's information to prospective visa applicants, it seems to me that it is not going to be a problem just in respect of the UK. For example, Hong Kong now has a mandatory private pension fund system. I do not know what the requirements are when they have to move it out, but we get people from Hong Kong as well. There is a worldwide trend towards mandatory private pension funds. It is going to be a growing problem of at least requiring people to be aware of what would occur in transferring into Australia. It is a must for this matter to be taken up with the migration department to ensure that this information is at least asked for at the time of visa application.

Mr Thomas—We have heard your suggestions. As my colleague said, we are in the process of preparing a tax ruling which will spell out in some more detail issues around the handling of these moneys and the taxation of them. When we release that—we will be doing publicity about it—we will certainly take on board your suggestions and any that the committee has.

Mr Cicchini—There is only one other comment that I want to make. Obviously, when the moneys are transferred to Australia they are preserved in the Australian superannuation system. From time to time there have been suggestions that people ought to be able to get early release of their super—

CHAIR—To pay their tax.

Mr Cicchini—to pay this tax liability.

CHAIR—That is right.

Mr Cicchini—That has implications if such a suggestion were to be made as to how it might be viewed in public that the government might be allowing early release for tax liabilities but possibly not early release for other matters that other people might think are just as important. I just wanted to put it on the table that it is a matter that has been considered.

Senator SHERRY—I understand. They could remain unemployed for 26 weeks and then they would get access to it, wouldn't they, to pay their tax bill? There are plenty of grounds for early release at the moment. I take your point.

Mr Cicchini—A committee is looking at that issue and it has made a report on it. I just wanted to let you know that we have thought about that issue and that in the committee's consideration of the matter it would be aware of the potential consequences of those sorts of issues.

CHAIR—It was certainly uppermost in Senator Bishop's mind when he wrote his submission, because there was a \$1,000 or £1,000 contribution which grew to \$20,000 or £20,000—whatever the amount was. The person was not a high wage earner—I think they worked in the retail area—so under normal circumstances the ability of such a person to transfer the money and to meet that obligation was very significant. There seemed to be hardship there. The committee looked at that, and that is one reason we felt that there must be such cases where it seems quite unreasonable not to allow access under these unusual circumstances.

Mr Cicchini—I accept that, and I accept that there are many unusual circumstances out there. You ought to be aware that one unusual circumstance for somebody might seem very trivial to somebody else, that is all.

Senator SHERRY—It sounds like a very hard line from the tax office.

Mr Cicchini—No, Treasury.

Senator SHERRY—Treasury—that is even worse!

Mr Cicchini—It is even worse, I know!

CHAIR—Thank you very much for your submission and presentation today. We look forward, Mr Murray, to a further evaluation of the matters raised.

Mr Murray—You may be aware that an international tax review has been announced by the Treasurer.

CHAIR—Yes.

Mr Murray—In some circumstances that relates to the FIF rules—not specifically section 27CAA—so it might be something that the committee will want to take into account during their deliberations as well. I believe that Treasury are aiming to prepare a discussion paper on that review around midyear.

CHAIR—No doubt the matters raised in this inquiry will be taken up by Treasury in its submission to that review. Thank you very much.

[9.45 a.m.]

BISHOP, Senator Mark

CHAIR—Thank you, Senator Bishop, for appearing before the committee today, and thank you very much for the very detailed and meticulous way in which you have discharged your obligations to your client. The committee appreciates it, and I am sure your client does too.

Senator Mark Bishop—I thank the committee for inviting me to give a brief submission, Senator Watson. I intend to read into *Hansard* a statement which summarises the key matters that were contained in the written submission that I provided to the committee. I state at the outset that, whilst the matter I am pursuing obviously has policy implications, I am pursuing it on behalf of a constituent who wrote to me and formally asked me to process it in the best manner that I thought applicable. I am not pretending to speak on behalf of the Australian Labor Party or to put forward any policy objectives of the Australian Labor Party in this sense; it is purely a constituency matter, and I wear that hat only, today.

The issues arising from the subject of this inquiry by the committee—namely, the taxation of superannuation transferred from overseas funds into Australian funds—were first brought my attention by a constituent who had emigrated from the United Kingdom. I have since come to realise the magnitude of the problem encountered by some immigrants to Australia. I have provided the committee with a submission numbered No.11, and the points that I wish to make today are included in that submission. There are a number of serious policy issues arising from the operation of section 27 of the Income Tax Assessment Act 1936 that are of particular concern. They are, firstly, the level of taxation of transferred superannuation at marginal tax rates; secondly, the apparent lack of policy rationale; thirdly, the six-month period of grace; and, fourthly, the fact that the tax cannot be paid out of the funds although they are classed as income, because they must be transferred directly into an approved superannuation fund.

These policy issues arise from the inequitable and anomalous practical operation of section 27CAA. The circumstances of my constituent highlighted those iniquities and anomalies. This constituent wished to transfer money from her superannuation fund in the United Kingdom to her Australian fund and discovered the tax impact of section 27CAA should she proceed with transferring the funds. As you are all no doubt aware, section 27CAA of the ITAA treats additional contributions and any growth in the superannuation funds since the time of becoming an Australian resident as income; thus tax would have been payable at the top marginal rate on the funds transferred.

This constituent has been seeking approval to have her United Kingdom funds transferred to her Australian approved superannuation fund since she left the United Kingdom and arrived in Australia in 1982. In the United Kingdom she had been a shop assistant for 12 years. When she left the United Kingdom there was about £1,000 in the employer sponsored superannuation fund; this is now around about £20,000. That strikes me as a huge rate of growth in almost 20 years, but I have been back to the woman concerned and questioned her closely on that issue over two or three years, and she has provided to me sufficient evidence that the sum has grown from £1,000 to £20,000.

So almost the entire sum to be transferred is growth, which is taxable as income under section 27CAA. The decline in the value of the Australian dollar has further contributed to the size of her tax liability. For reasons beyond her control, and in spite her repeated attempts to gain approval from her United Kingdom super fund and the United Kingdom Inland Revenue to transfer the funds, my constituent did not receive approval to transfer the funds from the United Kingdom super fund until 1999, when a legislative change in the United Kingdom led to her application finally being approved. If the funds had been transferred within six months of acquiring Australian residency—or, in this case, within six months from the commencement of the legislation in 1994—the funds transferred would have been exempt from tax. However, this was not possible in my constituent's case and did not occur, even though there were repeated attempts to achieve this. There are many complications associated with acquiring approval to transfer moneys in overseas superannuation funds.

A further inequity for my constituent was that, even though the funds to be transferred would be classified as income for tax purposes, the money from the United Kingdom fund must be paid directly into the Australian superannuation fund. This means that the moneys cannot be used to pay the tax liability that would arise from the transfer. As an employee in the retail industry and a relatively low paid worker, this constituent does not have the means to pay the resultant tax liability. If she has to transfer something in the order of £20,000—roughly equivalent to \$A60,000 or \$A70,000—and that sum is treated as income, it would mean that her income for the year, if she was an award worker on \$30,000 a year, would be close to \$100,000. A large amount of that income would be taxed at the highest marginal rate and she would have a taxation liability for the year in addition to normal taxation liability in the order of \$24,000 or \$25,000.

When her gross annual income is in the order of \$A30,000 per annum, to have an additional tax liability of \$A24,000 simply because she is transferring funds from an overseas fund to an Australian fund—and you do not have access to those moneys until you retire or reach the age of 55—is an absolute absurdity. In the real world it is an absolute prohibition on any person who can read or write and who is above the age of five from transferring funds from overseas into this country. Why would any person with any commonsense at all choose to transfer \$60,000 from overseas, lose \$25,000 to the Australian Taxation Office for no apparent reason and have to borrow money to pay that tax liability? The simplest and most obvious thing that any person with commonsense would do would be to leave his or her money in the fund in the United Kingdom, or put it into some sort of rollover entity in the United Kingdom, and access the money when that person finally chooses to retire from the work force at the age of 55 or 60.

So I suggest that the circumstances of my constituent are oppressive. I will just restate those inequities as I see them: money received and treated as superannuation is taxed as income; there is a period of six months grace, which has proved an impossible time frame in these circumstances and will continue to be in many others due to complicating factors in acquiring the United Kingdom's approval to transfer; and the tax liability cannot be paid with the funds transferred, making it financially non-viable for someone in my constituent's circumstances. In view of the oppressive impact of section 27CAA of the ITAA and the apparent lack of substantial policy rationale for its existence, its continued operation, I suggest, is problematic.

I have made several suggestions in my submission to the committee for mitigating the oppressive impact. Firstly, an exemption from income tax for those who are unable, through no

fault of their own, to transfer funds within the six-month period of grace would be more just than the existing period of grace provision. Clearly there are problems with the existing six-month time frame that result in the purpose of the provision being defeated. This situation needs to be remedied. Secondly, the equity of the law might be improved by moving the tax liability from the investor to the superannuation fund so that the funds transferred can be used to fulfil the liability—although, when you think about that, that really is a second-best option. Thirdly, the rate of taxation on the transfer of overseas superannuation funds to Australian approved funds should be reduced, in my opinion, so that it is consistent with taxation on domestic superannuation.

I suggest it is obvious that section 27CAA imposes unnecessary hardship on Australian residents who for legitimate reasons wish to transfer their money in overseas superannuation funds to an Australian fund. I believe that these problems arising from the operation of section 27CAA require resolution and that possible alternatives that will result in a more equitable operation of the provisions need to be canvassed.

One final matter I draw to the committee's attention is that in March or April of last year I sought advice from the Australian Taxation Office through the then Assistant Treasurer, Senator Kemp. Senator Kemp authorised a number of representatives from the ATO to attend my office for a discussion that went for about an hour on this particular issue. Arising from those discussions, I put to those taxation officials a number of questions which Senator Kemp kindly responded to in writing, some of which would be of interest to the committee. Senator Kemp's letter states:

I refer to your meeting of 4 April 2001 with representatives from my office and the Australian Taxation Office concerning the taxation treatment of benefits received by Australian residents from United Kingdom superannuation funds under section 27CAA of the *Income Tax Assessment Act 1936*.

The ATO has advised me that the answers to the specific questions you asked at the meeting are as follows:

How many taxpayer's have had amounts included in assessable income under section 27CAA?

There is insufficient data to answer this question.

How much tax has been collected under section 27CAA?

There is insufficient data to answer this question.

How many times has the issue about the taxation of amounts transferred from a United Kingdom superannuation fund to a complying superannuation fund in Australia outside the 6 month grace period been raised with the ATO?

Anecdotal evidence indicates that this issue has been raised with the ATO previously on a small number of isolated occasions. However, there is insufficient data to determine the precise number of queries received by the ATO about this issue.

Apart from that being a relatively smart-arse answer from the ATO, quite contemptuous of the legitimate questions raised by me, what is clear is that the ATO does not have any knowledge or evidence it is able to give on the amount of revenue gained from this section or the number of people who are caught by its intent when they seek to transfer funds into this country. By definition, that means its not having that information or not having been able to obtain that information in recent years or its choosing not to disclose that information—pick any answer of

the three you like. It means that the ATO is unable to add much value to the practical problems that members of the community face in this area.

Taking up the comments that you raised, Senator Watson, at the end of your discussion with the previous group of witnesses: when you go back and look at the EM for when these amendments were introduced in the parliament by the Labor government in 1994, at the minister's second reading speech and at the discussion in both houses when the bill was the subject of review by the parliament, you will find that there is no explanation offered by the minister of the day as to how section 27CAA would impact upon persons emigrating to Australia from other countries and how they would handle their superannuation funds.

CHAIR—What about the explanatory memorandum?

Senator Mark Bishop—There was nothing in the EM at all. It was an omnibus bill. When I had the Parliamentary Library research the matter, we found that there were a large number of issues in that bill, so it must have been an omnibus bill. This is one that was in there, but it was hardly described in the accompanying documentation. I think, with due respect to busy members of parliament, its impact was probably not understood by any of the persons involved in the taxation and superannuation debate in those days. It is only now, when people seek to transfer large amounts of moneys, that the harmful impact becomes a matter of some concern. So, with those comments, I am happy to take questions.

CHAIR—I am interested in your comment about the anecdotal evidence. It could appear that you and I are perhaps the only people who have raised these issues, because I have certainly had a number.

Senator Mark Bishop—It is a load of nonsense. There is widespread interest in this debate. My office received a significant number of written and phone inquiries from people on the east coast when it got out through the industry that I was interested in this particular issue. Secondly, there is a significant British community in Western Australia—perhaps more so proportionally than in other states—and my office has received a lot of inquiries from them about it. Thirdly, within the industry funds and the trade union movement, I have been informed by a number of people I know that a lot of migrants from the United Kingdom do currently leave funds in the United Kingdom because the tax rate is regarded as being prohibitive here. So the ATO may not have had a lot of direct contact, although my constituent advises me that she has written to the ATO and has approached a number of members of parliament on both sides of the house in Victoria and other states, and other members of parliament advise me that they have also received similar approaches from constituents in their electorates. I suggest that there is a degree of interest, and the degree of impact out there in the community might be more significant than officers from the ATO in Canberra might understand.

CHAIR—Thank you very much for the manner in which you have articulated the issue. I think you have encapsulated most of the matters very clearly. In my first question I indicated that there was a view in the tax community that a lot of moneys were being paid across but not into a regulated fund. Did that view come to you through your sorts of feedback?

Senator Mark Bishop—No. Nearly all of the people who have raised this issue with me or who have been referred to me by others have by and large been low- to middle-income earners

who have worked in their appropriate profession, vocation or trade in the United Kingdom. Their funds are, as in Australia, deducted at source, tied up in the employer sponsored fund, and they get a statement about every 12 months over there. This issue of perhaps improper use of the funds or of other elements in the community seeking to gain benefit from transferring funds under the guise of superannuation has not been raised with me by anyone. No evidence has been put to me by the ATO or Treasury as to its incidence and I would suggest that, if that scenario is being put forward by officers of the ATO as a rationale for retention of the section in the act without amendment, the onus would be upon them—without public understanding of the current rationale of the provision—to bring forward some evidence that untoward behaviour could perhaps be caused by changing that particular section.

CHAIR—Of course, you would be concerned about superannuation moneys being transferred to Australia and not being identified as superannuation moneys for the foreign exchange—or whatever it might be—requirements and then being dissipated into areas other than to a regulated superannuation fund from overseas.

Senator Mark Bishop—Of course. If the law of this country—or the law of the source country—says that the funds have to be transferred into regulated or approved funds in the host country, that law should be followed without exception. Any attempt to avoid it would be a matter of great concern.

CHAIR—From your experience in other committees, would you expect the prime departments to read most of the submissions?

Senator Mark Bishop—I was amazed when I heard that comment. I have never heard an officer of any department ever say they have not read a submission before.

Senator SHERRY—They may not have.

Senator Mark Bishop—Normally they have enough brains to be able to skirt around the issue and answer the concepts behind the submission. I have never heard it said, Senator.

Senator SHERRY—One point in respect of your constituent, Senator Bishop—and you may not be aware of their particular circumstances—do you know whether they took any advice on this issue before they left the UK? Did they know that this would become an issue when they moved to Australia?

Senator Mark Bishop—No, they shifted here in 1982. They tried repeatedly, they advise me, through the eighties to get access to the funds in the United Kingdom and bring them to Australia. Until the law was changed in 1999 in the United Kingdom, they could not get access to the funds, so the second part of your question—that there might be problems—did not enter their minds. It was only when they got it from UK Inland Revenue and they tried to get the funds out here that they were advised by their tax person that there was a significant tax liability.

CHAIR—But, Senator, UK laws are such that the accumulation in the UK is not assessable. Is that right?

Senator Mark Bishop—My understanding is that this was an employer-sponsored accumulation fund, and the worker in question worked for a very old and well-established retail company in the United Kingdom which had, for want of a better description, a paternalistic attitude to its employees. The vesting of superannuation benefits was a bit like that of the old funds in Australia: it did not take place until many years of employment with the company.

CHAIR—Thank you very much, Senator Bishop, for coming before the committee and for the work that you have put into it.

Senator Mark Bishop—Thank you, Senator, and thank you to the committee.

[10.08 a.m.]

GODDARD, Mrs Elizabeth Jane, Head of Research, Corporate Superannuation Association Inc.

CHAIR—Mrs Goddard, is this your first appearance before a parliamentary committee?

Mrs Goddard—Yes.

CHAIR—Please feel quite relaxed. We are seeking information and explanations, trying to improve the law and the fairness of the law. The rules are, basically, if you were not here earlier, that you are protected by parliamentary privilege. If there is anything that you feel is relevant to the inquiry and should be discussed with us in private, we will consider your request, but naturally we do prefer—where possible—information to be given in public. Welcome to the committee and thank you for coming here this morning. Your organisation is resident in Melbourne, is it?

Mrs Goddard—Yes, it is in Melbourne.

CHAIR—We invite you to make an opening statement—there might be, for example, aspects of your submission that you would highlight to the committee for the *Hansard* record.

Mrs Goddard—Thank you. I am here as a representative of the Corporate Superannuation Association. The Corporate Super Association represents the major corporate superannuation funds in Australia and these super funds, in turn, provide benefits for a very large number of Australians. The latest estimate was 750,000 people, and there is about \$60 billion invested on behalf of these people. Our submission has drawn on our knowledge of the legislation and our members' experiences with the provisions over the last seven to eight years. Although comments have been made by some of the representatives that the problem was perhaps a new one, I think it has been going on for some years.

We understand that the existing legislation is intended to complement the foreign investment fund legislation and is designed to prevent the exploitation of Australian tax concessions for superannuation. We do not quarrel with the objectives of the legislation. However, it has become clear over the period since the introduction of the measures in 1994 that certain provisions have the potential to place significant and often unexpected burdens on individuals who move to Australia to become residents, and the legislation provides a disincentive to those individuals to move their savings if they have the option as to whether they move them or not.

We are not opposed to the taxation of elements of the transferred benefits so far as these can be reasonably argued to be ascribed to investment growth or earnings during a period when the individual was fully committed to settling in Australia. However, it appears that the legislation as it stands has some undesirable and possibly unintended features. These are that there is some lack of clarity as to the scope of the application of section 27CAA and, in some instances, that the taxing of amounts represents rather more than just earnings during the period of residency. This happens, for example, where members of defined benefit funds pass some critical age at

which the defined benefit vesting levels climb steeply—and I think in Senator Bishop's evidence there was an instance of a member of an accumulation fund whose vested benefits also climbed steeply after they had become a resident. So, in a sense, it is not earnings that have accrued since the person became a resident of Australia; it is something rather more than just earnings.

CHAIR—You also referred to the scope, that people did not understand the scope. Could you articulate that a little bit more clearly?

Mrs Goddard—Section 27CAA taxes the growth in amounts properly payable to the individual, I believe, after some subtractions of contributions during the period when they have been a resident. The question arises as to what 'properly payable' means. There is another provision in the measures which tax contributions to the fund, and that is section 274(10) of the 1936 act. That provision—which I think is section 274(10)(c)—requires the recipient fund, if there is a transfer, to tax anything which exceeds the amount properly payable to the individual. We have no guidance as to what is meant by 'properly payable'. It might mean the vested benefits, and that is a plausible interpretation. When you get a transfer value between funds of an actuarial reserve, you might argue that those amounts are not properly payable to the individual at that point; it is just the actuarial estimate of what needs to be transferred to meet the required benefits. So there is some dispute, if there is a difference between the transfer value and the vested benefit at the point of transfer, as to whether that amount should be going into taxable contributions for the fund.

CHAIR—Thank you for that explanation.

Mrs Goddard—The other scope question, of course, was the interaction with the FIF provisions. I gather that there is some dispute as to whether section 23AK, which provides for the avoidance of double taxation of FIF attributed amounts, actually effectively excludes section 27CAA amounts from taxation. But our submission does not deal with that issue. Other people's have.

CHAIR—Would you like to look into that and give us an opinion on that?

Mrs Goddard—At a later point.

CHAIR—As a later contribution I think that would be useful.

Mrs Goddard—You mean section 274.

CHAIR—And 23K.

Mrs Goddard—Section 23AK.

CHAIR—Yes. Thank you. Whilst the committee's inquiry is primarily directed at the implication of section 27CAA, there are opportunities to examine some of the wider applications which could have an indirect bearing on that provision.

Mrs Goddard—Yes. It is interesting that the Australian Taxation Office representatives mentioned that there is to be a review of international taxation and that they will be looking at the FIF provisions. I am not sure if it has occurred to them that the section 27CAA provisions which they see as complementary to the FIF provisions might need review in any case.

CHAIR—Yes. We might have to ask them a subsequent question on notice.

Mrs Goddard—Going back to the issue of the steep climb in vested benefits during people's period of residency because they have reached a particular age or period of membership of the fund involved, I notice that the CPA has actually suggested that there should be some smoothing of the earnings over the whole period of fund membership. The taxing as income in a particular year of amounts which may in fact be inaccessible to the individual for many years in the future because of preservation rules is a very awkward issue. As I think has already been raised, it leads to the need for individuals to borrow sometimes quite substantial amounts. It seems very unusual that this should happen to Australians, many of them with not very significant income or capacity to borrow. In fact, at the end of the period when the person actually gets access to the benefits in the Australian fund once the preservation rules permit access, if they are withdrawing their benefit as a pension, it will be even longer before they withdraw sufficient funds to repay any borrowing that they have had to undertake.

CHAIR—And those borrowings are not tax deductible?

Mrs Goddard—That is an interesting question. Yes, I guess that is right. We have some suggested solutions, and these include increasing the concession period during which the benefits can be transferred free of tax—extending the six-month period. Another suggestion was permitting the release of benefits limited to an amount sufficient to meet the tax liability. The difficulty with that approach might be whether the UK funds would still then agree to a transfer of the moneys to an Australian fund that they knew was then going to release part of the benefits to pay an Australian tax bill. I do not know. I have not explored how they would look at that.

Another possibility was the imposition of the tax liability on the transferee fund direct as opposed to the individual or a deferral of the tax liability until the benefit was available to the member. There would be various options in that situation for dealing with the benefits and dividing the benefits into various sorts of statuses. Obviously, there is a large undeducted contributions element, but in relation to the amount which would potentially have been taxed under section 27CAA there would be various options for approaching that as a tax benefit. That is really the gist of our submission.

CHAIR—You are obviously well versed in taxation law. Accumulated earnings of superannuation in Australian funds are not actually taxed as income of the individual but paid through the fund. In circumstances where the money, for example, still stays in the superannuation system when it is moved between countries, why do you see the need to tax the accumulated income as income in Australia?

Mrs Goddard—I do not see the need for it to be taxed to the individual. I suppose, given the policy rationale and the way that all the legislation fits together, the rationale was that any earnings in the overseas fund should be taxed once the person becomes a resident. I do not think

the association feels particularly strongly about the need to tax these amounts, but I gather that the Australian Taxation Office and the Treasury do. If we take that as an immovable fact, our focus was really working out ways in which that tax could be paid that did not cause real financial distress to individuals.

CHAIR—So, essentially, you believe that the release of moneys to meet tax obligations should be extended to two years. We are interested in your proposal that there be a recognition, for example, of major overseas retirement funds in recognised countries as having the same statuses—quasi-complying funds—for taxation purposes. Therefore, the treatment of transfers between these funds would have the same character of being a rollover equivalent. Would you like to comment briefly on that issue?

Mrs Goddard—Yes. The question would arise as to how it was taxed on exit at that point. At the moment, a large portion of the transfer is untaxed on exit from the Australian fund, which is probably quite fair and reasonable. If you treated the whole amount as a taxed superannuation accrual in the Australian fund, the beneficiary might end up paying more tax.

CHAIR—Are you aware of significant amounts that could be transferred and not declared on a self-assessment basis?

Mrs Goddard—I am now self-employed, but I worked in a large accounting firm until two years ago, and we encountered a lot of expatriates who were doing the right thing—that is, they were self-assessing their attributed income under the FIF provisions and self-assessing their section 27CAA liabilities. One was conscious of the fact that there were not a lot of checks to pick up these amounts had they not been declared. One felt that the people who were getting good advice and paying for it were also paying tax liabilities which would perhaps otherwise be unknown to other individuals.

CHAIR—So your experience verifies the matter that I raised with the Treasury officials earlier?

Mrs Goddard—I am not aware of people avoiding the liabilities. It just struck me that, given that it was news to the people to whom I had to break the news, the news might never reach some people.

CHAIR—Your experience would indicate that these matters have been referred to the tax office?

Mrs Goddard—Yes, in my experience. The people I encountered would have reported the income.

CHAIR—So you believe it is more than just a handful?

Mrs Goddard—There were a lot of them. I was constantly on the phone to the tax office explaining that there was ‘this difficulty’ and ‘that difficulty’ and, ‘Had they ever looked at changing the legislation?’

CHAIR—So you specialised in this area with your chartered accountancy—or whatever—firm?

Mrs Goddard—Yes. But of course these last few remarks were made in my own capacity.

CHAIR—I recognise that. That is why we are not asking you for any names.

Mrs Goddard—Yes.

CHAIR—We respect that confidentiality because that is very important. Would you like to comment on matters raised by other witnesses?

Mrs Goddard—Yes. Are these in other submissions?

CHAIR—Yes; submissions and here today.

Mrs Goddard—Yes. I read all the other submissions and I noticed some interesting suggestions being made which were not covered by our submission and which I would heartily endorse. There were a number of issues raised in the submission by William M Mercer. I will refresh my memory.

CHAIR—Yes. Take your time.

Mrs Goddard—There was the matter of when residency commences and the issue of tax residency and permanent residency not being the same. I thought that was a very cogent point. It really means that this six-month period is simply not adequate and that maybe a different test—perhaps a hybrid of tax residency and permanent residency—should be adopted. There was the issue of earnings accruals before 1994 being taxed. I suppose that was something which was of grave concern in the early years, certainly, of the tax and I think it is still of concern. It would be of concern for Senator Bishop's constituent.

There was the issue that the liability is triggered even if you transfer the money between two funds in an overseas regime. There are complexities that arise with rollovers from employer sponsored UK funds to non-employer sponsored funds, at which point the FIF exemption ceases—the section 519 FIF exemption ceases and the amount becomes attributable for FIF. So at the point of transfer you have a section 27CAA liability followed by ongoing annual FIF attributions and when the person ultimately remits the amount to Australia you have a fairly complicated tax pudding. I gather that the tax office certainly regards the 27CAA liability as not occurring twice and I think they would consider that the FIF taxation would be credited against any residual section 27CAA liability. But it is not easy to comply with. If you have amounts moving between overseas funds, your chances of getting at any of the money to pay the tax liability which arises in Australia recede even further than they would do if the money was in an Australian fund and subject to preservation.

Senator SHERRY—I think you were sitting in when we were talking earlier with the other witnesses. You mentioned extending the period to two years. What about the idea that was discussed by the tax office where a person is clearly able to show that they were unaware of the provision—in particular, where their fund simply has not released the money and they breach the six-month rule through no fault of their own—whatever the time period, do you think there should be some flexibility there?

Mrs Goddard—Yes, it would seem fair for there to be flexibility.

Senator SHERRY—Why have you picked two years? Is there any particular reason?

Mrs Goddard—No, I think 12 months still might not be long enough. I would have thought two years would be long enough in many circumstances. It will not be appropriate for all cases. I would have thought that a discretion of flexibility should be present.

Senator SHERRY—Treasury seemed to be indicating, towards the end of their submission, that they were very strongly opposed to the tax liability being met out of the receipt of the benefit—effectively a form of early release; that was their argument. Do you have any comment about that?

Mrs Goddard—I am not really very comfortable with that viewpoint. I understand what they are saying. It is odd that preservation rules should be relaxed to allow the Australian Taxation Office to have their share, and I think they are concerned about the way that would be perceived. But if you consider the alternative is not that the Australian Taxation Office misses out on their share but that the individual misses out on some pretty much needed money that they have to find from nowhere, I think it makes rather more sense. I believe that the release of those benefits could be presented in a way that did not reflect unfavourably on the Australian Taxation Office. There must be a solution.

Senator SHERRY—Finally, you are here representing the Corporate Superannuation Association. Have you had any contact with corporate superannuation funds that operate across the Australian jurisdiction—UK companies, for example, that have their own corporate funds here?

Mrs Goddard—Yes.

Senator SHERRY—Do you have any particular experiences you could share with us about any difficulties this has presented for those corporate funds?

Mrs Goddard—The way the legislation works presents a difficulty for the member. I am just thinking—

Senator SHERRY—While you are thinking, I am looking at university superannuation. It strikes me that there would be a significant number of academics, in particular, moving around the world.

Mrs Goddard—Yes.

Senator SHERRY—They have highlighted issues. It seems to me, in the corporate sector at least, there is more likely to be a greater number of executives moving around the world who would be in corporate superannuation funds.

Mrs Goddard—Yes.

Senator SHERRY—If you cannot give us a response now, perhaps you could send the committee some further information that you may be able to obtain from corporate superannuation funds about members who operate in other jurisdictions.

Mrs Goddard—Certainly.

CHAIR—Perhaps you could consider the case, for example, of a technical operative who is brought to Australia, say, for the installation of a new piece of machinery. He is offered a permanent position with a company in Australia and runs into a major problem when he transfers from the UK pension scheme to the Australian pension scheme. Have you had any experience with that?

Mrs Goddard—Yes.

CHAIR—You might like to articulate that as part of your answer to Senator Sherry. We do not want to stop good technical people and university lecturers from coming to Australia because of these provisions. This is what is worrying us.

Mrs Goddard—I think university people often have the facility to leave their benefits in the UK scheme and take a deferred benefit. If they take a deferred pension, for example, they are better off because they will not be hit by section 27CAA. They will receive a pension that is non-rebateable. So there are swings and roundabouts, but that is what they will often do.

CHAIR—If they leave their money in the UK, they come to Australia and they are offered a permanent position at the university, when they retire they then have a huge tax bill, haven't they?

Mrs Goddard—If they take it as a lump sum, yes. If they take it as a lump sum at that point, at least they have the cash to pay for it.

CHAIR—At least they have the cash at that stage.

Mrs Goddard—Yes, they have the cash at that stage. If they take a pension and it is paid from the UK fund, we do not encounter this section 27CAA problem. Nevertheless, you have income being taxed at the marginal rate at that point, but that has always been an issue with foreign sourced pensions.

CHAIR—Are you worried about this concept of being taxed at the individual rate rather than at the rate applicable to growth within a superannuation fund, which is a maximum of 15 per cent?

Mrs Goddard—Yes, and the other issue that has been raised in one of the submissions was that even with the FIF regime you would end up with—actually the FIF regime is a bad example, although there is the wash up at the end when they dispose of the investment. But it has been raised that a lot of the income could be attributable to capital gains. Obviously the rate of tax on capital gains in Australia is significantly lower than the personal income tax rate.

CHAIR—But it is not treated as capital gains in Australia, is it?

Mrs Goddard—No. The section 27CAA amount is not. So yes, there is an issue with the rate of tax.

CHAIR—As you are a tax adviser, these people come to you and say, ‘I have been in Australia now for eight years. My super fund is accumulating very nicely in the UK. I have a dilemma: do I try to pay that tax now at the individual rate or do I wait until I retire?’ What sort of advice do you give under those circumstances, because it could place you in a very difficult situation?

Mrs Goddard—Sometimes I build a financial model and look at borrowing costs, the discounted future benefits and the tax rates applicable to each part of the benefits. Interest rate assumptions come into it. All sorts of unknowns come into these models. I did one model recently and it came out pretty even actually, whether you left the money in the UK or brought it over here—

CHAIR—I see.

Mrs Goddard—even taking into account the borrowing costs.

CHAIR—And you are being taxed as an individual?

Mrs Goddard—Yes. But there were so many unknowns that of course you end up advising them to do nothing—

CHAIR—That is right.

Mrs Goddard—because you do not know what is going to happen.

CHAIR—Thank you very much for the quality of your presentation. Obviously on technical issues we are very dependent on expert witnesses like you. The quality of the report is certainly enhanced by your presence and your submission, so thank you for appearing before the committee today.

Mrs Goddard—Thank you for the opportunity.

Proceedings suspended from 10.39 a.m. to 11.06 a.m.

McCORMACK, Mr Darren John, Compliance Manager, UniSuper

CHAIR—Welcome, Mr McCormack, to the Senate Select Committee on Superannuation. As this is your first appearance before a parliamentary committee, please be relaxed. We are here to get information rather than to intimidate witnesses. Naturally, we want to try to improve the law, including its fairness, at the same time making sure that Australia receives its fair entitlement to income tax. The evidence you provide to the committee is protected by parliamentary privilege. If you wish, you may ask that aspects of your evidence be taken in camera. The committee would consider that request, but we would prefer that evidence be taken in public. I invite you to make an opening statement and to draw the committee's attention to any significant matters in your submission that you think the committee should particularly take note of.

Mr McCormack—Thank you for providing UniSuper with the opportunity to speak to the committee. UniSuper, with \$10 billion under management for 320,000 account holders, represents academic and general staff in the Australian tertiary education sector. As one of Australia's largest superannuation funds, UniSuper believes it has a role to play in the formation of public policy on superannuation. The movement of staff within the university sector, both within Australia and from overseas, enables UniSuper to bring to this committee a practical viewpoint of the issues faced in assisting members with arranging transfers from nonresident funds, predominantly in the UK.

The UniSuper submission has focused on the practical implications of arranging transfers from nonresident funds. Whilst UniSuper acknowledges that there are issues in regard to the tax treatment of nonresident fund transfers, its experience with this issue does not give it sufficient expertise to make recommendations to the committee on changes to the Income Tax Assessment Act. UniSuper believes that, if the committee addresses the problems in the practical aspects of nonresident fund transfers, more complex solutions involving changes to the Income Tax Assessment Act may not be necessary. In its submission, UniSuper has identified three reasons it believes cause considerable delays in arranging transfers from nonresident funds: firstly, a different terminology used in Australian funds and nonresident funds; secondly, differing superannuation structures; and, lastly, the perceived bureaucracy experienced by UniSuper in arranging transfers.

To elaborate further on these issues: firstly, different terminology creates difficulties in providing the necessary information to facilitate a transfer. UniSuper does endeavour to provide the Australian equivalent of the information requested. However, this does not always satisfy the nonresident fund. Secondly, the experience of UniSuper in dealing with predominantly UK pension funds is that the lump sum structure of the Australian funds does not satisfy the pension preservation requirements of the UK pension schemes. The inability to accept a pension component can result in delays to the transfer or in failure of the transfer to proceed. Thirdly, the bureaucratic systems experienced by UniSuper in arranging transfers from UK pension schemes add considerable delays to the process. UniSuper has been able to establish efficiencies with the UK Universities Superannuation Scheme, with which it deals on a regular basis. The funds with which we do not deal on a regular basis have not been able to create the same efficiencies.

The UniSuper submission contains two recommendations which we believe will assist in streamlining nonresident fund transfers: firstly, the extension of the six-month grace period to 12 months for the ATO to then be able to exercise some discretion in this matter; and, secondly, APRA to work with major nonresident funds to establish a transfer protocol that satisfies the requirements of all parties involved. Thank you for giving UniSuper the opportunity of presenting to you. I will be pleased to elaborate on any issue in our submission or to take questions from the committee on issues raised in other submissions.

CHAIR—Thank you very much. Most of our witnesses have drawn attention to transfers between the UK and Australia. Undoubtedly some people within the university environment have come from other jurisdictions. I understand the problems are a little bit different if somebody transfers from the United States of America. Maybe you might like to articulate, or even take on notice, some of the issues that are of concern to you, say, from jurisdictions other than the UK.

Mr McCormack—Our experience is that actually we get very few, if any, transfers from United States funds.

CHAIR—Why is that?

Mr McCormack—I did read in one submission that there were issues regarding the transfer out of funds from the United States. If someone decides to transfer a United States fund, and if it is just a cash payment to the member, who then brings it into our fund, I do not know whether or not we would be able to track the original source of that money. To us it would just be a member's voluntary contribution that they have made, and it is money that has been cashed out of a US fund. So we do not have any dealings with United States based funds in terms of fund-to-fund transfers, as far as I am aware. There may be other issues that cause that.

CHAIR—On the other hand, putting on our responsibility hat so far as the revenue is concerned, do you think the jurisdiction is wide open to abuse in terms of people accumulating moneys overseas and then bringing moneys to Australia, and are some regimes more open to abuse than others?

Mr McCormack—The issue we have identified in our submission is making sure there is equity in the system, if someone is accumulating money outside the Australian superannuation system and there are taxation implications that apply to an Australian resident doing that—as opposed to someone from overseas who is accumulating money outside of the Australian superannuation regime and bringing that money in with no tax being payable in the Australian system. Our concern is an equity issue—that everybody, whether they be an Australian resident or an overseas resident, has their money treated equitably in terms of tax.

CHAIR—So you are aware of the possibility that people who come to reside here permanently after a period of time may bring their money here and escape the provisions of section 27CAA?

Mr McCormack—Certainly if the original source of the money is unknown and therefore the member just pays it to us as what we perceive to be a voluntary lump sum contribution, then it would be an undeducted contribution free of tax and the member would not have been taxed on that money at all.

CHAIR—How would you suggest that the regime be tightened to ensure that there is equity, when some people can bring their money across tax free and others go through the full rigours of the FIF, plus section 27CAA?

Mr McCormack—It would have to be a case of knowing the source of the funds that come in to us.

CHAIR—You do not ask, do you?

Mr McCormack—No. The member walks in with an amount of money they wish to deposit and that is it. I suppose the only other way of tracking down someone—as one submission suggested—would be through AUSTRAC. In terms of the movement of money between countries, there may be a way to use AUSTRAC to identify where a person is in receipt of funds from an overseas country and where those funds are moved into a superannuation fund.

CHAIR—Do you think AUSTRAC are picking up these sorts of moneys?

Mr McCormack—I could not, in my experience—

CHAIR—You do not have any experience of that.

Mr McCormack—We do not have any dealing with that organisation.

CHAIR—What about asking APRA to establish a protocol? Can you give us a framework on which we can build such a protocol?

Mr McCormack—I think there are two ways. Firstly, it might be done by creating an awareness in the overseas funds—especially in those in the UK, which we seem to mainly deal with—of the prudential regulation of the Australian system and helping them understand issues like preservation: that money comes into the fund and people cannot cash it out immediately, that there are issues regarding the preservation of those funds. Secondly, it might be done by helping them with the terminology. We could be looking at the terminology they use and trying to find consistent terminology so that, if they are requesting information from us, we know the sorts of things that they are after and what they are trying to identify. We could be trying to establish a system whereby, rather than them sending us a form that is based around a UK pension or a UK transfer, there is a specific form that is used between Australian and UK funds that gives them the information they need and enables us to identify the information they are after and provide it to them using the Australian system terminology.

CHAIR—What is the basic nature of the concerns raised by people who transfer across? Is there consistency in terms of what they are talking about? The tax office, for example, think that there is only a handful of cases. Do your people contact the tax office and ask them how tax is going to be applied in relation to these sorts of moneys or do they get professional people to do that for them? What is your advice when somebody comes? Do you tell them to ring up the tax office?

Mr McCormack—When we arrange a transfer, we give them a fairly plain English explanation of that part of the tax act so that they are at least aware that, if that money comes in outside of

the six-month transfer period, there are taxation implications. It would then be up to the individual if they wished to seek further professional advice on that. They would go to the ATO or they would go to their own tax adviser and get some more professional advice. We at least pay them the courtesy of making sure that they are aware so that, if there is an issue of them being outside of that period, they can then seek advice before doing that transfer—rather than doing the transfer and then getting a tax bill at some stage down the track which they were not expecting.

CHAIR—An earlier witness suggested that perhaps there is not much difference between keeping their money in England until they retire or bringing it out here at some intermediate time and paying the tax at the rate of an individual. What sorts of experiences do your people have? Do they tend to keep their money in the UK? Generally, they get a pension, don't they? Do they prefer that approach? Do they wish to pay the tax here in Australia or get a lump sum if they can and then pay the tax as an individual?

Mr McCormack—The main issue is that they want to consolidate their super. They do not want to leave bits spread around the world, especially if they moved in and out of different UK funds or different countries. We encourage Australian people to consolidate their super rather than have it spread around a number of different funds with different employers, and the people who come in from the UK are in a similar position. They also wish to have the money come over to Australia with them so that they can keep track of it, so that they do not have to rely on a fund on the other side of the world to communicate with them and send them correspondence and so that they at least know what is happening. We find that most UK people, when they have joined our fund, will contact us and start raising issues about transferring into the fund and what they need to do.

CHAIR—Some of these people, because of the nature of their work, obviously work in a number of universities in a number of countries. From your experience, most of them would have a number of funds, wouldn't they? How many funds would be the norm for a person settling in Australia? I understand that in recent years universities in some countries have moved to have a single fund—as you have quite rightly done to have a single fund for 38 universities in Australia—but that may not be the norm and people might be members of lots of funds. What is the experience?

Mr McCormack—The experience is predominantly with one fund but, working with some examples of transfers that we have in progress at the moment, we have one member who has 10 different funds—

CHAIR—That does not surprise me.

Mr McCormack—all based in the UK, and it looks as though another member of the same family has about another six as well. If it is a husband and wife combination, they have obviously moved around various employers and accumulated a number of funds. In the majority of cases we would deal with, the person has only one fund. If there is a university superannuation scheme and it covers their university sector, it is the same as ours and they can move around tertiary education and stay in one fund. Obviously, if they are going through different employers, then it is the same as the Australian system, I suppose—different employers have different funds.

CHAIR—Yes. I was just looking at the practical problems. If people are going to be members of quite a number of funds including maybe a corporate fund, a personal fund, a uni type fund or a number of uni funds, we want to ensure that there is some consistency. Are you happy about the consistency of approach? When you raised this question of a protocol, it raised in our minds the possibility of people being treated differently or some person having different treatment from different funds.

Mr McCormack—The issue, we have said, is a protocol developed between the major funds. There are some major funds that we deal with on a regular basis, but there are obviously other, smaller funds. If they are not involved in this process, they are still going to be operating under an old system—unless APRA became a contact point and it was well known in, say, the UK that if you were arranging a transfer to an Australian fund you could contact APRA because they could then assist you with this protocol. Then funds that do it only on a very minimal basis could use that system when they needed to and APRA could be making it well known and making them aware that they were there and that they could assist in the transfer process.

CHAIR—APRA are already doing this, are they?

Mr McCormack—No, I do not believe they are at the moment.

CHAIR—Do you think they should? Why do you think APRA would be better than the Australian tax office?

Mr McCormack—In their position as the prudential regulator of superannuation. Certainly a number of funds that we deal with require copies of compliance letters issued by APRA. They want to establish that our fund is a complying fund under the Australian system, so they actually request a copy of a compliance letter from APRA to do that. There is some awareness of APRA being the prudential regulation authority.

CHAIR—Obviously you take a very responsible view of drawing the new entrants' attention to the provisions of section 27CAA when they join the uni fund. Do you think, for example, that perhaps this information should be conveyed to people at an earlier stage, such as on the visa application, listing such questions as: are you a member of a fund and, if so, name that fund or identify it in some way? Would that be useful?

Mr McCormack—It would be useful but I suppose it raises the issue that a person settling in Australia initially has a lot of concerns in new employment, settling a family and schooling. Even if the information were made available to them that they needed to think about superannuation, it is hard to say whether it would still be high enough up the priorities list that they would be prompted to do something immediately, when they would have maybe greater concerns just dealing with their day-to-day existence and getting settled in a new country. I suppose the issue arises only when the member comes to us requesting to do a transfer. That could be 12 months after they have settled in Australia. Even at that stage it is too late; the window of opportunity has closed for them.

CHAIR—Whether the moneys should be transferred to Australia or, say, kept in the UK can obviously depend on a number of factors including the domestic relationships between the spouses. Are you aware, for example, that the advice that has been given in the UK preparatory

to transfer is adequate? It has been brought to our attention that perhaps there are some situations where funds remain in the UK rather than being transferred over here because the rules in relation to de factos are different. The consequences, therefore, say, of dissolution could be important. There is the potential for an unsatisfactory relationship to continue. These are the sorts of matters that perhaps can be fairly critical. From your experience, is there any misselling, or wrong or inappropriate advice, or advisers in the UK just not understanding the situation in Australia as perhaps they should?

Mr McCormack—In the experience that we have had, once our members are in Australia—they may have received advice before leaving the UK, but they do not necessary disclose that—it is very difficult for them to get information from a UK fund or to get a contact in a UK fund. They experience a lot frustration trying to do that, especially when there are delays in the transfer process. They are really the innocent party between us, as a super fund trying to arrange it, and the UK. The member sometimes tries to intervene to see if they can speed up the process. In our experience in that area, they tend to feel a fair bit of frustration in not being able to do anything to speed up the process and in not having a consistent contact or someone they can talk to at the fund who is able to assist them.

Senator SHERRY—Going back a step, I gather from what you have said that people from the UK who come to the fund do not have any idea—or much idea—about, for example, the six-month period or obviously the Australian tax regime and those sorts of things. Is it generally true that they have not got that information before they left the UK?

Mr McCormack—Yes. We have had a number of people who, once we have sent them that information about the six-month period, have changed their minds. They got back to us and said, ‘I was not aware of this. I have already been here six months. Therefore, I do not think I will proceed with the transfer.’

Senator SHERRY—Going back to the point that the chairman was exploring earlier, if there was a requirement on their visa application form through migration to note their pension fund membership—and that is all they had do—and then in follow-up interviews for visa application, if they have notified of a pension fund, the officer said, ‘There is a range of requirements in respect of transfers of money to Australia. Either get some advice or here is some advice.’ Do you think that would be to their advantage?

Mr McCormack—I agree that, at least with that, everything would have been done to make the person aware. Whether they take up the opportunity is their decision, but at least everything would have been done to create that awareness. That would be good.

Senator SHERRY—You make the point that much of the problem is that they are just not aware of it before they get to Australia, and then they deal with it after they have dealt with the other problems of life.

Mr McCormack—Yes, that is right.

Senator SHERRY—I notice that you deal with about 100 applications—100 transfers of nonresident funds—a year?

Mr McCormack—Yes, that is right.

Senator SHERRY—You say that you deal with the universities' super scheme. Is there more than one university super scheme in the UK?

Mr McCormack—No. The Universities Superannuation Scheme covers the university sector over there.

Senator SHERRY—So there is one national fund, if you like?

Mr McCormack—Yes, that is right.

Senator SHERRY—You surely would have developed a good working relationship with them because you would be dealing with them quite frequently, I imagine?

Mr McCormack—Yes. At the moment we have 97 transfers in progress. Of those, 23 are from the USS, and we do have a good working relationship with them. There are a couple of transfers here. One was completed in four months and one was completed in seven months. So one was done inside the allowable time frame and one was fairly close to it.

Senator SHERRY—So even where you have a good working relationship and where they presumably are able to expedite the bureaucratic process because they have a greater knowledge of the fund, you still get people falling outside the six-month time frame?

Mr McCormack—Yes, that is right.

Senator SHERRY—Does that happen very often?

Mr McCormack—All the time. Even with the USS fund, a 12- to 18-month period is fairly consistent in terms of how long it takes to transfer money. That is dealing with funds, as I said, that we deal with on a consistent basis and where we therefore have been able to speed up the process.

Senator SHERRY—So, 12 to 18 months with a fund with which you have a good working relationship and which has good knowledge. It would seem to indicate that that period should be significantly greater than six months.

Mr McCormack—Yes, that is our proposal. It does need to be extended. Twelve to 24 months seems to be the trend through most of the submissions.

Senator SHERRY—What about funds other than the UK university super fund? Do you find that their knowledge is less and the time frames are greater?

Mr McCormack—Yes, that is the general gist of what happens. One transfer is just on two years outstanding with a fund we deal with on a very minimal basis. As an example, another fund sends us 25 pages of various forms to fill out. It is simply that they do not know what they

need to get from us to facilitate the transfer, so they basically send us one of everything and leave it up to us to then sort out what information they will need to complete the transfer.

Senator SHERRY—Thank you.

CHAIR—We are quite impressed with your approach that there be a standard protocol because of the delays that occur within the UK jurisdiction about matters such as terminology, intent and these sorts of things. On the one hand, you are talking about the Australian Taxation Office, and on the other you are talking about APRA. If it could be standardised—for example, if you had a standardised form—do you think that should be the responsibility of APRA or the tax office? Is there any form available at the moment as to the sort of information that is required to satisfy the UK authorities? Have you yourselves developed a protocol identifying the sorts of issues, from your experience, that need to be addressed? Somehow our authorities, whether it is APRA or the ATO, should be addressing this issue. The delay is of concern and there does seem to me to be a need for a standardised form, prepared either by APRA or the tax office, to be available on their web site so that people from UniSuper or other employers can access that. If you have a standardised form which is prepared in conjunction with the UK authorities, obviously that is going to expedite that payment. Certainly, until that is done, we must question the six-month rule. On the other hand, if we have a protocol which is going to streamline or facilitate the quicker movement of that money that, in itself, is very desirable. What is your advice as to whether it should come from the ATO or APRA, or doesn't it really matter?

Mr McCormack—In our submission we have looked at it from two points of view. One is making the ATO aware that a member has requested a transfer or that a transfer is to take place. We do propose—and other submissions have proposed—that there be some sort of discretion at the ATO. In the majority of cases, if not all, the delay in a transfer is no fault of the member: from the point of time when a member initiates a transfer, there is nothing the member can really do to speed up the process.

CHAIR—No.

Mr McCormack—If they have tried to initiate it as early as possible once they have arrived in the country to fit in with that six-month window—

CHAIR—But if we have a standardised form—whether that be prepared by APRA or the ATO, which is on the web site or is certainly available to all superannuation funds in Australia—instead of somebody coming to you and saying, 'We want to transfer money,' and you drawing their attention to the provisions of section 27CAA, you could say, 'If you complete this form, that should expedite the payment.' That might save them going to expensive accountants, for example, to assist in determining whether the money should be payable. We are just trying to simplify the process.

Mr McCormack—Yes, we agree entirely that a simple process can save a lot more detailed fixes such as having to look addresses, tax acts and so on.

CHAIR—And overcome a lot of these unnecessarily long delays.

Mr McCormack—That is right.

CHAIR—Do you think it would do that?

Mr McCormack—I think it would. It would enable people to get the transfer happening before they even left the UK. They could at least access the web site and become aware of the fact that there is an arrangement between the countries to enable the money to be moved, and then they could start things happening before they even left the UK. So I have no doubt that it would speed up and simplify the process, both for Australian and UK funds.

Senator SHERRY—Have you had any dealings with any other countries on transfers at all? You have not mentioned much about the US.

Mr McCormack—New Zealand is the only other country we deal with. Again, it is very straightforward. They usually contact us by email and advise us if there is a transfer amount. They ask, ‘Will you accept the transfer?’ We say, ‘Yes, we will,’ and the money turns up. So it is a very straightforward, simple process. So we deal with New Zealand on the odd occasion, but it is predominantly the UK.

CHAIR—I think there are a couple of issues there that we will certainly take up. Thank you very much for appearing before the committee. Obviously every witness comes before the committee with a view about how the legislation impacts quite significantly. We do appreciate your attendance here today because it has an important impact on so many of your people. We want to be in a position to draw some of the world’s best people to our universities; we certainly do not want tax to be an impediment.

Mr McCormack—Thank you for the opportunity.

[11.37 a.m.]

BURT, Ms Tracey Anne, Manager, AMP Superannuation Ltd

CIACCIARELLI, Mr John, Technical Services Manager, Distribution, AMP Ltd

EDWARDS, Mr Simon Gerard, Manager, Strategic Policy, Government Affairs, AMP Ltd

CHAIR—I welcome representatives from AMP. I value the contributions made by Australia's largest life insurance administrator. I invite you to speak to your submission and, at the same time, perhaps to comment on other matters that have arisen from other people's submissions or presentations made this morning.

Mr Edwards—Can I thank the committee for conducting this inquiry. I think this is another demonstration of the very effective presence of this particular forum within our parliamentary system. It is not the sort of issue that public policy makers would normally take up or give priority to, so AMP recognises the value of this committee and the work it does and thanks you for conducting this particular inquiry.

Our submission was brief, and my comments will be brief as well. From the submissions that we have read, which you have received, there are probably four primary areas of concern that we believe have crystallised over time. The first is the question of the exemption time period for the transfers and whether it is an adequate time period or not. We would urge the committee, in considering its recommendations on this area, to give due consideration to the practicalities of transfers from overseas funds into our superannuation funds. The evidence of the previous witness and the evidence we will give today is testimony to the fact that this is not a process that is uncomplicated, short or simple to undertake and that the time period of six months which was granted in the 1994 legislation is, we believe, inappropriate and does not represent the true time that it takes to undertake one of these transfers.

The second issue that has come out in the submissions relates to the appropriate tax rate that should be applied on the growth part of transfers in excess of that six-month period. Consideration of that matter has drawn us to the conclusion that there is no obvious tax rate or method of taxing that is the most appropriate. It is not obvious whether it should be done on the basis of being an income at marginal tax rates, a capital gains treatment or a concessional hybrid of capital gains and income. We really do believe that is effectively a public policy issue that should go to the question of the full scope of the tax system and to whether this particular tax rate or tax method acts as a barrier to people making a transfer. It should be a straight public policy question as to whether we want people to transfer money into this country or not. If it is acting as a barrier and it could be changed or set at a lower rate so as to act as an incentive, we believe the government should give consideration to that matter.

CHAIR—Do you think it is a barrier?

Mr Edwards—I think for some people it is. Clearly, if you were taxing at a marginal tax rate of 48.5 per cent as against 15 per cent, it is a barrier. It is a disincentive, particularly when just

from a normal, common, reasonable man's perspective you are looking at other contributions going into super funds being taxed at 15 per cent at present.

CHAIR—Or less.

Mr Edwards—Or less. That is right. To then be told that you are going to be taxed at 48.5 per cent is an issue.

Senator SHERRY—Do you think it is issue in, say, the UK, where as I understand it there is no tax on their pension plans? Do they find it a bit odd to have tax on the pension or their superannuation in Australia?

Mr Ciacciarelli—In the UK, they get taxed at the end when they get their pension. They get the pension taxed at the marginal tax rates at the end when they take the money out.

Senator SHERRY—Except for the first 20,000, isn't it?

Mr Ciacciarelli—There are some scales and I think they have changed in recent times. I am not right on the pace. But the fundamental thing is that they do not see any tax on the way through and they see tax being paid when they actually take their pension. It would be odd for that person to put money into superannuation or transfer their money and find that they are paying tax on this money. It would be a potential barrier.

Mr Edwards—The third issue which we raised most predominantly in our submission was the question of the source of funds for making the payment of tax once the tax has arisen. As I will ask John to elaborate on in moment, in our experience that is the greatest barrier to people undertaking a transfer. Once they have got over the hurdle of our elaborate and labyrinthine tax and superannuation systems, to then be told that they have to find the money to make the payment from income outside of the transfer—which they consider to be their money anyway—acts as a significant barrier to affecting a transfer.

The final issue in a general sense is the broad range of technical issues dealing with what constitutes the appropriate definition of resident: whether it should be tax residency or physical residency. These are practical administration issues which Tracey will be able to elaborate on. All of those matters need to be resolved clearly in public policy terms. We do not believe they are sufficiently clear at the present time to support the public policy ideal of encouraging people to transfer their overseas funds to our Australian superannuation system. We do urge that in making recommendations, the committee emphasises that that should be the public policy objective of this particular part of our tax legislation.

With that short summary, we are more than happy to take your questions. I would point out that I have brought John along today. He is an expert with the technical adviser side and he deals with people trying to make transfers, or their advisers who are seeking information on making transfers. From our trustee side, I have brought Tracey, who has to deal with people in actually getting the money into our super fund.

CHAIR—We would like to start off by gaining some of the practical experience from Ms Burt. If you would not mind, could you enumerate some of these aspects that we should take into

consideration to facilitate the smooth transfer, because we do not want these technical impediments—say, definition issues—to cloud the issue or to increase the cost of transferring moneys by virtue of people having to get expensive legal or accounting advice if these matters could be simplified.

Ms Burt—Leaving aside the personal issues of a particular person's decision about whether or not they fundamentally want to transfer, once they have made that decision—following on from the previous speaker's comments—it is extraordinarily difficult to actually find someone within the UK system, whether it be within the AMP Network in the UK or any other life insurance company or indeed any other trustee of a pension fund in the UK willing to take the time to understand the differences in terminology who, once they are willing, will actually commit that time to understand the differences in terminology. That leaves aside the fundamental differences of Australia being a lump sum environment and the UK being a pension environment: terminology such as 'preservation' is not a concept that they have and 'contracted out rights' is terminology that we do not have.

I suppose what I am getting at is that they talk a different language, even though it is supposedly fundamentally English. Once we have got over that hurdle, payments out of pension funds in the UK, from my experience, tend to be relegated to the bottom of the in-basket: they are difficult to deal with because of the terminology and because of the procedures that in the past had to be gone through by the pension fund within the UK. They are left until last again and again and again. Once they have reached the top of the in-basket, the person who actually has that matter to deal with is, in my experience, someone relatively junior within the UK administration process, and that then adds a delay while they find out what they have to do.

Up until April of last year it was not well known in the UK administration system that the requests for international transfers had to go to their pensions office for approval, which added a delay—because once you have gone through the pension fund process then you have to go through the pension office process—and once all of that was gone through then you could have a transfer. The UK system changed in April of last year to move the decision making to the UK pension fund, with warnings to the UK pension fund that, if they were found to have been inadvisedly transferring, the pension fund itself would lose its tax-free status. Obviously the pension funds in the UK do not want that to happen so they are being very, very careful and that adds time. Also, following from the previous speaker's comments, 18 months to two years-plus is a very common time frame for these sorts of transfers.

CHAIR—Your comments take Senator Sherry and me back quite a few years to when this committee increasingly requested governments to move people, by various incentives, from a lump sum mentality to a pension arrangement. That matter does not seem to have been taken up by Treasury, does it? We seem to be moving to accumulation type funds, and then people have the problem of finding a financial adviser to work out an appropriate mechanism to provide some income streams for their retirement. So perhaps you have awakened the committee once again to the need to come back to a matter which I think is pretty fundamental. Perhaps Australia is still besotted with this lump sum mentality, and that really has to change in the interests of ensuring a degree of global standardisation, as well as ensuring that even Australians have a hassle-free transfer from a lump sum environment to getting some adequate income streams to finance their retirement years—so that is point No. 1. We will certainly take that up, and thank you for raising that with us.

Do you think we have really given enough attention to discussions to determine international tax treaties? If these sorts of matters, such as section 27CAA and FIF-type rules, were also encapsulated in these treaties, perhaps it might be more easily understood by the UK pension authorities and by the UK pension funds. Somehow we have to get that information through much more succinctly and speedily. Our previous witness gave us the clue about perhaps getting a standardised protocol on a web site. Maybe that could be transmitted internationally to other jurisdictions such as the US. Would you like to comment on which is the best thing to do? Perhaps there could be an international double taxation-type treaty so there is that awareness because it seems a little bit short on superannuation, doesn't it?

Ms Burt—I am not a tax expert, so I cannot provide any useful comments about whether or not it would be useful to include superannuation in the double tax situations. Having said that, I cannot see that it would hurt.

CHAIR—Perhaps your colleague might be able to comment.

Mr Ciacciarelli—Anything will help. It is a different language, as Tracey has said. They do not understand our terminology; we do not understand theirs. If there is standardised terminology through a double tax agreement it should help the cause.

CHAIR—What about these standardised protocols that Mr McCormack from UniSuper raised, either by the tax office or by APRA? Who would you recommend to initiate—

Mr Ciacciarelli—I would have to give some further thought to it. I would probably tend towards the tax office, in my view. Again a standardised protocol is along the lines of improving what we have got at the moment. It would be part of the process.

CHAIR—But we have not got much at the moment, have we? That is the problem. Each fund issues a different piece of paper.

Mr Ciacciarelli—Even trying to explain it to, for example, an AMP colleague who works in the UK, it looks like I am coming from Mars. They have no understanding of our system, and theirs is difficult as well. Even within the same internal company where we are trying to achieve the same thing—that is, to assist clients—there is difficulty in coming across the two systems.

Senator SHERRY—Ms Burt, in your experience do you find many people before they come to Australia know about the processes they have to go through, and the time frames?

Ms Burt—In my experience it would be one in a thousand who has any concept of the process involved, let alone the detail.

Senator SHERRY—We discussed earlier ensuring that there is a part of the visa or migration form to fill out about pension fund membership. If they had to do that, they are then alerted by the officer in the UK. Do you think that would help?

Ms Burt—Yes, I do. Simon referred to comments that we wanted to make about the application of the six-month period—whatever number that ends up being, and Simon can add to it—about actually referring the six months to immigration residency rather than tax residency, in which

case the immigration process would make more sense and actually have at least a heads up about pension and superannuation issues to be included.

Senator SHERRY—We have talked a lot about the UK. Does AMP actually have any experience with people from other countries wanting to transfer into Australia?

Ms Burt—Very, very limited.

Mr Ciacciarelli—We have inquiries from the likes of the USA and Canada and, in recent times, we have had a few inquiries from South Africa, but they never eventuate to anything. The cases that we are actually involved in helping people with are all from the UK.

CHAIR—Are there any tax office rulings in relation to the issues of whether the matter is tax residency or actual residency?

Ms Burt—There are no rulings per se, but simply the fact that the provision is in the tax act alerts us to it being the tax definition of residency.

CHAIR—What are the sorts of differences that could occur in terms of time between what we refer to as tax residency and actual residency? There can be differences. For example, can that be six months or three months? Is there always a significant difference between the two?

Ms Burt—There is not always a significant difference, but it can be in terms of years rather than months because tax residency is about people being in Australia, whereas immigration residency is about a decision to be Australian.

CHAIR—So that is not affected by people moving in and out of the country frequently?

Ms Burt—The immigration residency definition?

CHAIR—Yes.

Ms Burt—No. It is very similar in outcome to being an Australian citizen.

CHAIR—So the act says ‘tax residency’ at the moment.

Ms Burt—That is the effect of it.

CHAIR—Does tax residency create any unfairness as opposed to actual residency—are there any problems, so far as you are concerned? If so, what are they?

Mr Ciacciarelli—It requires some decision as to when you became an Australian resident. In some cases that is quite simple if the person has migrated to Australia. Where they come here firstly temporarily and then decide, then you have a difference. That requires a definition of when you become an Australian resident.

CHAIR—So it would appear that somebody—whether it is Treasury or the tax office—should be spending some time to establish some protocol of definitions, or definition equivalents. Would that help?

Mr Edwards—It goes somewhat further than that, though. Certainly we would see in principle that the current arrangements for someone who simply acts under a tax residency circumstance is, in public policy terms, not inappropriate. If someone simply comes to Australia for a period of time for work purposes and the tax rules qualify them as a tax resident and then, for whatever reason, they wanted to transfer all of their superannuation to Australia while they have not actually made the decision to be a resident here, we do not believe that the current tax arrangements in section 27CAA are significantly inappropriate.

However, the problem occurs where someone has made the decision to live in Australia and has gone through the immigration process. As previous speakers have said and as submissions made clear, there are a lot of things that go on in someone's life when they are moving to another country and setting up in another country. To someone in that circumstance, the six-month period that applies just sets them up for having to face the consequences of the tax obligation on the transfer once it is finally effected. Our view is that the law as it currently stands, for someone who would be simply facing the situation of a tax residency, is not inappropriate.

But in public policy terms, once you have made the decision that you want to encourage people to bring their superannuation or their savings into Australia for the purposes of having them invested through our super funds, their residency status in immigration terms becomes the appropriate time to set the clock ticking on whatever time period you require them to make that transfer in. It is simply an easy administrative time. You can define it quite clearly, it is obvious and, as Senator Sherry has made clear, it actually provides you with an administrative process which can alert the people to the consequences of the transfer action.

CHAIR—A previous witness, Mrs Elizabeth Goddard, drew attention to sections 23AK and 27CD as having applications in terms of exemption et cetera. Would you like to comment about the interaction of those provisions in relation to the inquiry?

Mr Ciacciarelli—I am not in a position to assist you there, I am afraid. I have not looked at those sections in this context.

Ms Burt—I would have to repeat those comments.

CHAIR—When a person comes to an AMP public offer fund and wishes to transfer or deposit money from overseas, what sort of advice do you give them?

Mr Ciacciarelli—Perhaps I can address those comments. We try very hard through the person's adviser—normally there is an adviser as well as the member—to educate the person as to what is involved practically but also as to what is involved financially: whether it is in fact in their best interests to transfer the money.

CHAIR—Yes, that is the issue.

Mr Ciacciarelli—We are not entirely convinced that the best thing to do is to always move your money, even though sometimes the psychology of the person is: ‘I am now here and I want all my money here.’ Sometimes that is not a logical way to approach it. We try to get them to focus on: what benefits are you potentially forgoing into the future by transferring your money to Australia now? Are you conscious of the fact that there might be some tax to pay as well in doing that? So our advice is: do not think it is the automatic thing to do; think about what you are forgoing in terms of the pension benefits that will emerge from the UK fund and how you see yourself in retirement. It is not an easy thing to resolve and it is a very individual approach. So, to be honest, we are not actively trying to get people to transfer this money to Australia; in fact, we try very hard to make sure that they are absolutely certain that they want to get the money here and that, before they do so, it is the right thing for them to do.

CHAIR—Given that the UK’s is essentially a pension fund system in which the income stream is taxed at marginal rates, is there a tax impediment when they convert to a lump sum in order to have their entitlement transferred to Australia?

Ms Burt—I am not aware that there is an impediment of that nature.

Mr Ciacciarelli—My understanding is that, once you have crystallised your entitlement to the pension, at or about that time you are able to access some of that in lump sum form. My understanding is that that is tax free in the UK but that the balance must then be taken in pension. I do not believe you can take all of your money from an occupational pension plan, in particular, in lump sum form out of the UK once you have commenced your pension.

CHAIR—I see; that is once you have commenced your pension. But on the way through is there an impediment—for example, as some funds have here in Australia—to converting to a lump sum entitlement?

Mr Ciacciarelli—There is no tax impediment but, depending on the nature of the fund, there could be, for example, some loss of a vested entitlement or something like that—I am not certain of how the funds would operate there. Remember we are dealing here with many corporate funds, for example. As for the specifics of the funds and whether taking money out early from a fund means you lose some of your benefit, I am not in a position to say.

CHAIR—You have, for example, public offer funds as well as a number of other funds in the UK. Do you run into the difficulty of differences between a vested entitlement and a cash entitlement?

Mr Ciacciarelli—Not with the funds we offer. The entitlement is based on accumulation value which is fully vested, so I do not see a problem with the public offer type of fund in the UK; it is more the corporate fund in the UK where you may have some loss of entitlement by taking your money earlier, I would suspect.

CHAIR—So it is like a life policy: if you take it early it is discounted?

Mr Ciacciarelli—Yes, but I have not been involved with too many of those.

CHAIR—It is certainly not the case with public offer funds but may be so with corporate funds, is that right?

Mr Ciacciarelli—Yes.

Senator SHERRY—I just want to cover two points before we finish. I know that we are not inquiring into this, but it is the reverse situation: Australians leaving Australia and going wherever, and now they can take their money. Have you had any dealings on behalf of individuals who are leaving Australia and who are wanting to transfer their super out of Australia, now that it is allowed?

Mr Ciacciarelli—We have inquiries and, from the level of inquiry, certainly people are queuing up. It kicks off on 1 July 2002. We expect that there will be some people who will take their money out and incur the withholding tax that now applies.

Senator SHERRY—Is it too early to determine what proportion will do that, once they understand the tax penalty?

Mr Ciacciarelli—Certainly, from my perspective. There are obviously people inquiring and wanting to know when it kicks off; but, to the extent that that will occur, I am not in a position to say.

Senator SHERRY—You made a suggestion that individuals should be able to access transferred funds to make the payment to the ATO. Treasury raised this with us—you were not here. The officer, having raised it on his own initiative, vehemently opposed it as another form of early release. Do you see it as compromising unnecessarily the current early release provisions?

Mr Edwards—Can I put it in these terms: you are coming into a situation where you have got two public policy objectives. One objective is to encourage people to take in superannuation funds and preserve them to retirement. In fact, that is the public policy objective overall. Under the current regime, our experience is that requiring people to make payment of their tax liability in that circumstance, from funds other than the transferred funds, is a significant detriment to actually transferring the funds in the first place. So we are not achieving the public policy objective. Whether or not allowing people access to those funds to make that payment is such a detriment to the end goal, that you can balance the two and say it is greater than not having the funds in the first place, I do not think you can make that call. On fairly simple grounds, we can put it this way: we believe that we should have a public policy objective to get the money into Australia, and we believe that allowing people to make the tax payment from the funds transferred would encourage them to make the transfer in the first place. That said, we think it is a worthwhile objective, and we do not think that it is so sufficiently compromises the early release arrangements as to not do it.

Senator SHERRY—I could not have put it better myself. The tax office cannot give us any idea of the amounts involved. As a very substantial player in the Australian market, can you give us any figures or any indication based on the number of transfers that you handle—

Mr Edwards—The amount of tax involved?

Senator SHERRY—Yes, of the level of tax involved.

Mr Edwards—We might need to take that away and think about it.

Senator SHERRY—You can take it on notice. I just found it very hard to accept from the tax office that they cannot give us data or at least go and do some representative survey and give us at least some indication on this. We have no idea what we are dealing with here.

Mr Edwards—We can probably look at some of the transfers that have been done to see what sorts of payments were made. I would make the point that perhaps the tax office would not make to you, and that is that we are looking not just at the numbers who have transferred and how much tax they paid but at the fact that they do not transfer at all. That is more of an important issue.

One further point that we would like to raise for the committee to consider in making recommendations relates to an issue that has only just recently come up, particularly in the UK. Submissions have already made reference to the interaction between the FIF rules and section 27CAA, and the question of whether there is effectively double taxation occurring in certain circumstances. One issue that we believe the Treasury do need to have a look at, at this point in time, in terms of linking 27CAA and the FIF rules together is in relation to the new development in the UK of what are called ‘group personal pension plans’. These plans are a master trust arrangement whereby an individual has a personal plan which would effectively fall under the FIF rules, but it is also under a master trust with employer contributions to it so that it would effectively fall under the section 27CAA rules. There is clearly an opportunity for a bit of a mixed definition about which rules should apply, and we just think that the Treasury should have a look at it when considering where to do go on this issue.

CHAIR—Can you give them some guidelines?

Mr Edwards—Guidelines are worth thinking about.

CHAIR—Perhaps you might like to take that on notice.

Mr Edwards—Certainly.

CHAIR—Thank you very much for sharing your experiences with us. We will try and encapsulate them in our report. Thank you for appearing before the committee today.

Proceedings suspended from 12.10 p.m. to 2.05 p.m.

STEVENS, Mr Raymond John, National Technical Manager Financial Planning, Mercer Human Resource Consulting Pty Ltd

CHAIR—Welcome Mr Stevens. I think that this is the first time you are giving evidence by audio for us. We have enjoyed your personal contributions face to face on previous occasions and we thank you for your contributions and the input from Mercer.

Mr Stevens—Thank you very much.

CHAIR—Mr Stevens, you know the rules. You are still protected by parliamentary privilege even though it is an audio hookup. If there are aspects that later on you would like to take in private, we can arrange that. We prefer, naturally, that the proceedings always be in the public domain. We thank you and we now invite you to speak to your presentation.

Mr Stevens—Thank you. I would just like to make four points. Our submission sets out a number of important modifications which could be made to the existing system. Some other submissions seem to be proposing a replacement of the existing system rather than modification. We do not consider that the existing structure is perfect, but we are not aware that anyone has come up with a perfect alternative. We are concerned that a replacement of the existing structure could involve major transitional problems and then in three or four years time there will be a Senate inquiry into the practical problems which have emerged with the new structure. The first point that I would like to make, having read a number of the other submissions, is that we advocate modification at this stage rather than a major structural change.

The second point is that a number of submissions are from people who have had to pay Australian tax on their transfer, and they object to paying that tax. While this reaction is completely understandable, I wonder whether they have sought professional advice and, if so, whether that advice was sound. Most of the cases I become involved in involve transfers from occupational schemes in the United Kingdom. Our examination has nearly always shown that the client is likely to be better off paying the up-front tax in Australia than leaving the benefit in the UK fund and eventually receiving a fully taxable pension from the UK fund. Apart from there usually being a saving in the overall tax payable, there is more flexibility in how the benefit can be taken.

Under the UK system, the benefit can usually be taken only as a non-commutable lifetime pension, ceasing on death except perhaps for a reversionary spouse pension. Once the transfer value is paid to an Australian fund, you can usually choose an appropriate growth investment strategy and eventually take the benefit as a lump sum, an allocated pension or some other form of pension, or a mixture of those things as you wish. So in spite of the Australian tax, transfer is generally better than leaving the benefit in a UK fund. Of course, the client has to be able to pay the up-front tax. I think we would all agree that that problem has to be addressed by the government, and it is fairly easily addressed.

My third point is that some submissions only address the situation in which a benefit is transferred to an Australian fund, or else they advocate that the tax treatment be different, depending on whether you receive the benefit from the overseas fund in cash or whether you

transfer it into a fund. At present, the tax payable in Australia is the same for benefits transferred to a fund and benefits received in cash. I do not consider that we should change this. While UK benefits can generally be released only if they are transferred to a fund, that is not the case with most countries—in particular, New Zealand. So we need a system which can handle both transfers and cash benefits, and I do not think we should complicate matters by introducing separate systems.

Finally, a number of submissions, including Mercer's, advocate the six-month window for tax exemption be increased. However, many submissions seem to advocate this to encourage people to transfer overseas benefits soon after they arrive in Australia. In my view, this is only appropriate for Australians returning to Australia. They should have a practical period to arrange transfer of benefits built up while overseas. However, my experience with clients born in other countries is that, when they first arrive, they have not even thought about where they want to retire. For some years, many who think about it at all plan to return to their home country on retirement. Then they find that the children are growing up here, their closest friends are here and, eventually, they decide they will retire here. That, to my mind, is when it is appropriate to transfer their overseas benefit to Australia. I do not think we want a system which strongly encourages transfer before it may be appropriate. I would be happy to answer any questions that you have.

CHAIR—Thank you, Mr Stevens. You also mentioned the fact that the transfers are taxed at the individual's marginal tax rate and you draw the committee's attention to the fact that this is a tax which is far heavier than that for investments which are transferred, which are not of a superannuation character—non-superannuation assets. You give the impression that this is a little bit unfair. As I read your submission, you suggest that perhaps we should look at the tax rate to include only 75 per cent of the assessable income, recognising capital gains implications, to give it some parity with capital gains. We are interested in that concept. Do you think it is reasonable that these moneys, when transferred—having met all the very strict protocols—are taxed at the individual's highest tax rate?

Mr Stevens—I think that is one of the big problems with the existing system. It does not matter, obviously, if somebody transfers within a couple of years but, as I said in my opening remarks, it may not be appropriate to transfer your benefit here for 20 years. If somebody arrives here when they are 35, it may be when they are in their 50s that they start thinking about where they are going to retire and perhaps bringing their benefit here. Then they are basically up for tax covering perhaps the last 15 or 20 years. That tax—almost invariably at the maximum tax rate, even though the person may not normally be someone who pays tax at that level—is, to my mind, far too high. We have put up two pragmatic suggestions, I guess you could call them, for reducing the rate of tax. I think that is a very vital change which is needed.

CHAIR—What about your view where, for example, a superannuation benefit or the assets are transferred from one corporate fund to another fund within the same corporate structure, which triggers tax in Australia for an Australian resident? Do you view that as being reasonable under the FIF rules?

Mr Stevens—No. I have to say that I wonder how often that tax is actually collected, but that does not alter the fact that strictly speaking the legislation requires that the Australian tax be paid when a payment is made out of an overseas fund. So if it is simply transferred to another

fund in the same country—or even another country; you could have someone in the UK who is moving to Hong Kong or vice versa and they move their benefit from the UK to Hong Kong, or from Hong Kong to the UK—I cannot see why Australia should chip in and impose any tax at that point of time.

CHAIR—However, would you draw a distinction, for example, if those funds were transferred outside that corporate regime, because it could open up avenues for taxation avoidance by the funds being transferred to the Bahamas or Guernsey?

Mr Stevens—Yes, one would have to think about what restrictions there need to be. One pragmatic suggestion is that you would only allow exemption where it is transferred to another fund in the same country. So if the benefit is, for example, already in a UK fund and the employer sponsoring that fund is taken over and benefits are consolidated in another UK fund, we do not think there should be any tax at that point of time. But if at that point of time the person transferred it from a UK fund to any other country—which could of course include the Bahamas and other tax havens—I would not feel so worried about the fact that we impose tax.

CHAIR—Earlier witnesses suggested the need for a protocol to be established by either the tax office or APRA and for it to be put on the relevant web sites, because there are problems of definition between Australia and the UK in particular and this could be seen as a means of expediting the payment, given that there are inherent delays with assessors in the UK having difficulty coming to grips with the Australian system. So that is one particular approach. Another approach is to suggest that international treaties acknowledge the superannuation issue. In such an environment it would certainly be much more easily drawn to the attention of the various players, whether they be the clerks in the UK pension office or the people handling the transfers out of the relevant UK fund. How would you view looking at either or both of these suggestions?

Mr Stevens—I think both of them have merit. The United Kingdom changed some aspects of their procedures a little over a year ago. In the previous year when they were considering these, I became aware of them only because our UK colleagues were invited to comment on the proposals and they brought them to me and one of my colleagues, and we made some suggestions. A couple of very minor suggestions were thankfully taken into account but most of them were just not taken into account at all. I think there needs to be consultation between the UK in particular and Australian authorities, such as the tax office or APRA, perhaps with assistance from industry. In other words, it needs to have more power than simply some individual unknown to them from Australia who pointed out a few things that he did not think were practical. So I think there does need to be some talk between those countries.

Regarding the aspect of whether you have different terms for each country, any of the suggestions we have made in our submission were made on what I would call a one size fits all basis, because we cannot rush into a system where you have a different procedure for each country. That would take some years to actually negotiate and bring about. But you do have significant disadvantage in the UK and in New Zealand, which are probably the extreme examples of this. In the UK all tax is imposed on what we call superannuation benefits at the benefit stage whereas New Zealand is the opposite. New Zealand imposes a 33 per cent tax on the employer contribution and a 33 per cent tax on the investment income, which happens to be their maximum marginal tax rate, and then imposes no tax on the benefit.

So you do get some situations which apply in New Zealand but do not apply in the UK. The classic example is that, if a New Zealander comes to live in Australia and they leave their benefit in the New Zealand fund—for whatever reason, either ignorance or because they think they may be going back there and that it will be easier—they have the problem that, while their benefit sits in that New Zealand fund, the New Zealand tax regime taxes that investment income at 33 per cent. If the person later on decides to transfer that benefit to Australia, we then impose a further tax of up to 48½ per cent on that investment income, which has already been taxed at 33 per cent.

So there is scope for country by country agreements, but initially we probably need to concentrate on getting the system for generally handling transfers modified and then look at whether we can have a country by country system where it would be far easier to recognise how the benefit is being taxed in that other country.

Senator SHERRY—While we are talking about other countries, have you had any cases of people wanting to transfer in from countries other than the UK and New Zealand?

Mr Stevens—Canada and the United States. This differs a little from one other submission, but my understanding is that pension fund benefits in the United States cannot be transferred to Australia. It may be that some of their so-called 401(k) plans may become available to be transferred, but in general my understanding is that transfers from the US are not possible. That is obviously something that ought to be negotiated, because there is a reasonable number of people who move between our two countries.

Senator SHERRY—That is something that puzzled me in the evidence we have heard earlier—that it is New Zealand and overwhelmingly the UK. Thanks for that.

Mr Stevens—I have also had South Africa and so on, but certainly I would think that 95 per cent of the cases I see are either New Zealand or the UK.

Senator SHERRY—Again, the evidence we have heard earlier seems overwhelmingly to confirm that when a person leaves, say, the UK they have no idea about what the regime is in order to transfer, what the dates are and what the tax rates are. Is that your experience?

Mr Stevens—Yes. I have usually found that the first task I have when somebody raises this possibility, for whatever reason, is to give them a letter pointing this out. Of course, one of the things I point out is the Australian tax, which usually comes as a complete surprise to them. They cannot understand why there has been no tax imposed in their own country and then, when they want to bring it to Australia, we impose a tax on it. It does seem somewhat ironic.

Senator SHERRY—We had a discussion this morning about how we can improve the awareness, hopefully before people leave the UK. One of the thoughts we have had is that when a person applies for either migration or a visa—whatever the case may be—they are required to put on the form whether they have a pension fund. That would alert the migration authorities in the UK before they come to Australia, and they can at least advise them to go to an adviser or give them some information. What is your response to that?

Mr Stevens—I think if you had a fairly simple leaflet or flyer of some sort—it would not have to cover the details minutely—you could issue it to all people applying for migration, but the problem with that is that they probably get a whole heap of papers and they might not notice it. If you had a question, as you suggested, and in response to that you then issued them with a little flyer or leaflet, I think that would be an excellent idea. I have noticed a lot of resentment because they find out about this after they have come here.

Senator SHERRY—That is the evidence we are receiving: that there is enormous resentment because they find out about all of this when they are in Australia and often they find out too late, beyond the six-month period. Regarding the six-month period, you have recommended 12 months after permanent residency. We had evidence this morning from UniSuper. They have a good relationship with the university fund in the UK and they are saying that it takes 18 months to two years for a person to go through the bureaucratic requirements to transfer, and AMP confirmed that. Do you think 12 months is still too short a period of time?

Mr Stevens—In many cases, yes, unfortunately. I think the UK is improving a little bit. We talked about UK residents, for example, migrating here and not being aware of the rules, but the problem I have found is that neither are many of the UK funds aware of them. I have had many situations where we have sent off material which we know complies with all their requirements; there has been a delay and they have eventually come back and said, ‘We think we need such and such.’ I have had to say to them, ‘Your regulations were changed three years ago to remove that requirement,’ and they say, ‘We didn’t know.’ I suppose it is understandable, but you do not find the fund secretaries and so on keeping on top of the rules for transfers to Australia, because that is not a mainstream part of their operation. As the rules become better known to superannuation people in the UK, I think that hopefully that will speed up, but I have certainly had cases where you are struggling to get it through in 12 months. Even if you are doing a lot of chasing up, it seems to disappear into a black hole and it is hard to find out exactly why it is being delayed.

Senator SHERRY—We had the tax office appearing before us earlier and I asked them what revenue is collected and whether they have any idea what revenue is not collected. Can you give us—even if it is anecdotal—any ballpark figures from your experience?

Mr Stevens—I do not know anything about the size in total. In the largest individual case I have had, the tax payable would be \$170,000. We always point this out to them. When the money finally arrives, we send them a reminder and a final estimate of the tax they will have to pay. I have sometimes had people then ring me and say, ‘I’ve looked right through *TaxPack* and I can’t find anything that tells me I have to report this income that you told me about, therefore I’m not going to do it.’ All I can tell them is that there is a fairly general question asking, ‘Have you received any benefits from overseas funds or trusts.’ If you have, I think it says to ring a particular tax office number.

I suspect there are a lot who decide that they will get back at what they feel is a punitive tax by just not disclosing it, and the tax office probably has limited ability to pick it up unless it basically asks superannuation funds to report what transfers they have received. But bear in mind that as well as transfers sometimes it is benefits received in cash from overseas funds. For example, if you get somebody from the UK who leaves their benefit there until they get to, say, age 65, then they will start to receive a pension, but there may be a small part of the pension

which can be commuted to a lump sum and that is paid direct to the individual. The person may not even speak to an adviser about whether there is any tax payable on that benefit. I think there is a huge uncollected revenue in this area.

Senator SHERRY—This is what worries me. I am concerned that we have had a law on the statute books for an eight-year period but the tax office really cannot give us any idea about the numbers. I gather from what you are saying that we should be prompting—pursuing is too harsh a word—the tax office to pursue more accurate figures and ways of changing the provisions so that the tax collected is what is required.

Mr Stevens—The other worry I have about the tax rates being far too high, in my view, is that as an adviser I have no option but to tell people what tax they should pay. Whether they actually turn around and choose to pay it or choose not to disclose it is something I can only counsel them on. Ultimately, it is their decision. But it worries me that you get the honest client that you are dealing with who, because you tell them they have to return it, does so and then pays this heavy rate of tax, while nothing happens to the people who—either out of ignorance or through just saying, ‘Well, I can’t really see where I have to disclose it’—do not. The system is very unfair. I would prefer a lower rate of tax—a fairer rate of tax, as I would put it—which is better policed.

CHAIR—For the purpose of the *Hansard* record, I would like you to repeat the view about where, as we understand it from your presentation, an Australian resident transferring to a UK affiliate and then subsequently coming back to Australia has to pay tax not only on the increase while he was in the overseas fund but also on the growth in the Australian component, whereas as I understand it that Australian component has been subject to tax. You indicate the unfairness of that. Have I read it correctly and, if so, is there a credit for the Australian tax when that money comes back into Australia?

Mr Stevens—Not in my view, because one of the situations we are talking about is where the person has built up a benefit in an Australian fund, which is perhaps a multinational fund, then has left Australia and gone to work with the same company—for example in the UK—and their benefit has been transferred from the Australian fund. Some years ago it was possible to do that without actually paying any tax on the Australian benefit. It was like a rollover, if you like. That is not permitted, and it has not been permitted for a few years.

Having got into the UK fund, the person might work in the UK for 10 years and then come back again. Instead of the tax applying to the growth since they came back to Australia, because of the way the legislation is worded it dates from the first day in the period to which the benefit relates—which, of course, includes their original Australian service. It is the first date in that period on which they were an Australian resident for tax purposes and a member of the UK fund, which means the time at which they originally transferred their Australian benefit to the UK fund. Growth after that date—in other words, all the growth that has occurred while they have had their money in the UK fund—is taxable income when they bring it back. That seems to be most unfair.

CHAIR—We understand no tax credit is provided in such circumstances in respect of the Australian derived component.

Mr Stevens—That would be my understanding too, yes.

CHAIR—Also, would you confirm that there is a precedent in relation to the ability to take out taxes to preserve benefit, for example in order to meet your surcharge from superannuation? If we adopted that sort of approach, do you think that it would not really be at variance with the preservation rules?

Mr Stevens—Because, as I say, we already have a precedent, with the surcharge we have a problem in that the assessment is often not received until some time after the event which gave rise to the surcharge. One of the problems is that by then the person may no longer have an amount accumulating in a superannuation fund; they may by then have converted their benefit to, for example, a pension benefit. In section 27 of the tax act, the definition of ‘eligible termination payment’ has been altered over the last couple of years to provide that, if you commute part of your pension to a lump sum and that lump sum is applied wholly to meet a surcharge tax liability, that amount is not an eligible termination payment and is not part of your taxable income. It is almost like paying an expense out of the fund, but it comes out of your superannuation fund; otherwise, the individual has to find it from other resources.

To me, this is exactly the same situation. We have received money from, particularly, a UK fund—where they will only release the money if it all goes into an Australian fund—and then perhaps 12 months down the track the person receives a tax assessment. They should be able to pay part of the tax which arises because of the transfer from the UK by taking an amount out of their existing superannuation, even though it is a preserved benefit. That is what is allowed with a surcharge, in any event. The surcharge is paid first out of the preserved section of the benefit, and that would be what I would propose should happen with this.

CHAIR—Given the recent changes to the UK law and the increasing popularity of hybrid arrangements involving master trusts, this arrangement seems to cause some complexity because of the different tax consequences that could apply to the different components. Have you struck that yet?

Mr Stevens—Are we talking about the UK?

CHAIR—The UK side, yes.

Mr Stevens—To my mind, the biggest problem at the UK end is that if you have your money in a personal pension plan, which is essentially the equivalent of what we would call either a master trust or a retail type fund—in other words, not a fund which is operated by the employer—then you can arrange transfer of those benefits in theory, but the Australian fund has to undertake to pay any benefit arising from that transfer and at least 75 per cent of it in the form of a non-commutable, lifetime pension. The first problem we have is that, apart from perhaps a couple of government funds, I do not know of any fund in Australia which will accept money on those terms. Therefore, transfer is not generally possible.

It seemed to be a condition that the UK used to require virtually all benefits that came to Australian funds to be paid in pension form. They eventually dropped that, taking an attitude of, ‘Well, if that’s the way you do it in Australia then so be it,’ but for some reason it has been retained for funds other than those operated by employers. More and more employer

arrangements in the UK are being run not through funds operated by the employer but through master trusts, for the same sorts of reasons that people are going that way here. That is one of the biggest problems that we have with transfers from the UK, but that is one which is a problem at the UK end. That was one thing we raised 18 or so months ago, but we were not there on the spot, nor were we a big player as far as they were concerned. If there were an official discussion between the Australian and the UK authorities, we might get that sort of problem removed.

CHAIR—This inquiry has brought back some issues that this committee was very strong on perhaps six or seven years ago in terms of trying to move the Australian superannuation system towards an income streams approach. The fact that so many accumulation type funds are being encouraged nowadays indicates that we seem to be moving back to a lump sum sort of approach without any real incentives to develop an income streams approach. It would appear that the UK authorities would be a lot happier if they were aware that the money was going essentially into such a lifetime return rather than into a lump sum arrangement. Would you like to express some views?

Mr Stevens—That is true. These problems do not apply for transfers to a lot of countries other than Australia, countries which basically have pension systems rather than lump sum systems. But my point is that, unless we do that for everybody, why should that limitation be imposed just on transfers from the UK and only on some transfers from the UK? They removed that requirement about five years ago for transfers from what they call occupational schemes, which are what we would call employer sponsored funds. They have retained it for the equivalent of our industry funds, master trusts and retail type personal arrangements.

CHAIR—Perhaps the committee has been a little bit remiss in not pushing this income streams approach in the last five or six years as it should have done in the same way that we have persevered with the quarterly payments suggestions.

Mr Stevens—I think the only thing is that we must have an enormous proportion, and I do not know the figures, of at least modestly sized benefits—not the smaller ones but the medium to large benefits—at least being taken as allocated pensions. The UK people would say that is not a genuine pension but I think that that product is working extremely well in introducing a lot of people to the idea of a pension without going as far as compelling it. They are quite willingly taking that type of product and we certainly need to build on it. To go as far as compelling people to take lifetime pensions would be a very big step for the Australian public.

CHAIR—Without going down the route of compulsion, perhaps you could make it financially attractive by use of reasonable benefit limits arrangements et cetera to encourage people to go down the pension route much more easily.

Mr Stevens—With another hat on, I was a member of a committee of the Institute of Actuaries, which I think about three years ago published a paper that had a number of these sorts of options. Certainly what we sought in that was not to compel people to take their benefits in pension form but to build in sticks and carrots, if you like, to strongly encourage it—more strongly that we do now.

CHAIR—Thank you very much, Mr Stevens. As usual, you have given us a lot of food for thought. Also, I would like to take this opportunity to ask you to pass on our very good wishes to your colleague John Ward. We have always enjoyed your presentations.

Mr Stevens—I should mention that I officially retired last Friday. I reached age 65 and I had told them I was retiring at that stage, but my replacement does not come on board for a couple of weeks so I am sort of helping out. I am just a part-time employee talking to you today.

CHAIR—Best wishes for a long and happy retirement. You have made a great contribution to superannuation. Thank you.

I would now like to bring to the table our next witnesses, who are from the Institute of Chartered Accountants. Because we have run a little bit over time, we might have to interrupt your presentation because we are taking a pre-booked call from the UK at three o'clock. We do apologise for that but we would prefer to take part of your evidence now and then we will revert to the UK at three o'clock; otherwise, there will be cost problems and the phone hook-up arrangements may be difficult after that. I apologise for that. The secretary has just drawn to my attention that we did run a little bit over time, but I am sure you benefited as much as we did from the evidence of Mr Stevens.

[2.45 p.m.]

NEGLINE, Mr Anthony Francis, Consultant, Institute of Chartered Accountants in Australia

ORCHARD, Mrs Susan Janet, Superannuation Technical Consultant, Institute of Chartered Accountants in Australia

CHAIR—I welcome the representatives from the Institute of Chartered Accountants. Mr Negline has appeared before the committee wearing a different hat, but he is a consultant to the institute, and Mrs Orchard has been a frequent witness before our committee. We invite you to speak to your submission.

Mr Negline—It is extremely timely that the committee takes note of this taxation measure given the increasing incidence of people travelling to and from Australia for either employment or other reasons. The provisions which affect the transfer of benefits, specifically to Australia, are extremely complex and they affect a number of different areas of tax law. Any amendments that the government might pick up from this inquiry need to be made in a calm and considered manner so that we do not run into the problem that Ray Stevens identified—that in three or four years time there is another inquiry run by another Senate select committee for superannuation.

Having said that, the issue of residency is of particular importance to the timing of when benefits are taxed, if they are going to be taxed. When is someone a resident? There are at least three different times when someone can be classified as a resident. They can be a resident for tax purposes, and that happens extremely quickly. They can be a resident for migration purposes, and that may happen quickly or it may not. Then there is of course citizenship status.

Just moving back to residency for migration law, that can happen at two stages: you can be either a permanent resident or a temporary resident, but you would be a resident for tax purposes. Provision 27CAA, which is the provision of the 1936 tax act that we are talking about, applies if you are a resident for tax purposes, which happens extremely quickly. That is the nub of the problem. As Ray Stevens mentioned, the issue is that people take a long time to determine whether or not they are actually going to retire in Australia; they take a long time to determine whether or not they will be citizen; they take a long time to gain permanent residency under migration law—they do not take a long time to become a resident for tax purposes.

If I could just use my spouse as an example, she arrived in Australia 14 years ago, in 1988. She became a permanent resident in November 1989 and has yet to take out citizenship. That is her personal choice. If she had any retirement moneys in her country of origin, which is Ireland, these provisions would apply to her on the benefits of transfer. That is the nature of the provision that we are talking about—the incidence of tax residency, permanent residency and citizenship.

CHAIR—They also apply retrospectively, prior to 1994 when section 27CAA of the act came into effect.

Mr Negline—Correct.

CHAIR—There are not very many cases of that in tax law, are there?

Mr Negline—No. Having said that, also within CAA is the concept of ‘properly payable’. It is a phrase that is used a couple of times within the particular section. The definition of ‘properly payable’ has never really been clearly identified or clearly explained. It is not explained in the explanatory memorandum. There is no judicial explanation from other cases involving a similar term. There is no example in ATO public rulings or released private rulings to our knowledge. The definition of ‘properly payable’ needs to be determined because it is that term which determines how much of the benefit is actually subject to tax when it is transferred into Australia. So that term needs to be clarified. At the same time, that definition of ‘properly payable’ appears to take no account of the issue, of the terms of the scheme from where the benefit is being paid: vesting scales, surplus payments, additional payments—a whole lot of scheme arrangements may affect the actual benefit that is being paid. Indeed, there may be compensation payments coming the way of some people.

Preservation is also an issue. That was raised by Ray Stevens in his evidence. When the benefits arrive in Australia, they are preserved. If they are heavily taxed, where is the taxpayer meant to get hold of the proceeds of that tax, especially if they are not able to cash part of the benefit to pay the tax if it is deemed necessary? There is also the potential for double taxation in some instances, and there is the issue of interaction with other tax measures, in particular the foreign investment fund regime. There is an exclusion in the FIF regime for employer sponsored funds but not for personal funds. So that needs to be clarified as well at some point in time.

CHAIR—Hybrid schemes, master trusts.

Mr Negline—Really any scheme that is designed for retirement needs to be covered off, doesn’t it?

Mrs Orchard—A further analogy in relation to residency is the person who becomes a temporary resident for the purpose of taking up employment. They stay as a temporary resident initially on a six-month contract, but they may stay here for two or three years and become an integral part of the company. At that time the employer, to retain a person within their work force who has the skills that their company needs and is a part of that group, then offers to sponsor that person to become a permanent resident.

The trigger that helps the person make a decision about where they may spend the rest of their life occurs two or three years down the track, after they have become a resident for the purposes of tax. So all of a sudden they have this additional tax bill—2½ years worth of growth on a benefit—purely because they did not know they were going to become a permanent resident and they were not in a position to make decisions. We would see that it is important to bring the concept of ‘permanent residency’ into any measure. This is when somebody would be in a position of knowing when and where they might be making their retirement happen. So they would have full knowledge when making a decision to become a permanent resident, hence being in a position to elect to bring in benefits from other countries. That is just a different analogy which will help explain that problem.

CHAIR—Is it so new that the international treaties do not pay enough attention to retirement incomes and such transfers? For example, a guy who does technical work may come from the UK to Australia—and for tax purposes he essentially would be an Australian resident—and find that his UK employer suddenly changes their own internal superannuation or retirement arrangements and transfers the money from one fund to another. In that case, this guy would suddenly find himself subject to Australian tax on something that has happened within the UK as a result of an internal arrangement. He may have no intention of staying in Australia permanently but, as I understand it, that triggers a tax obligation under the present law. Is that correct?

Mrs Orchard—It does trigger a tax obligation, but whether or not the individual is actually aware of that tax obligation is another issue.

CHAIR—Yes, but I am looking—

Mrs Orchard—Inadvertently and incorrectly, a tax obligation is triggered. However, there is no trigger to tell an individual that the tax obligation is there. As Ray Stevens pointed out in his discussions, the *TaxPack* refers you to an ATO helpline and gives a number to call to find out what your obligation is. So it is not really clear what the obligation is to the individual either.

Mr Negline—I would think that in that instance you could perhaps include it in the international agreement—and it is a very lengthy process to get all of the international agreements organised.

CHAIR—Yes.

Mr Negline—Maybe the commissioner needs some sort of discretion to say, ‘Okay, if the money is not being involved in Australia, I have the discretion not to include an amount in assessable income.’

CHAIR—In these types of circumstances?

Mr Negline—That is right. A public ruling could be issued accordingly as to the circumstances in which he would exercise his discretion favourably.

CHAIR—I draw that example to your attention to indicate how somebody may suddenly become liable to an Australian tax obligation without being fully aware of what has happened to his fund. It is outside his control.

Mr Negline— Not only is it an issue of the taxpayer being aware; think about the tax office trying to administer the law: how would they know what is happening? There is no way they would know unless the taxpayer made disclosure.

CHAIR—It may be that one of his colleagues, who came out to Australia with him, had decided to stay and attention was drawn to that fact.

Mr Negline—Yes. In other words, the disclosure happens by accident or by the taxpayer making disclosure.

CHAIR—Or by one of his colleagues from the same firm disclosing such a transfer or an arrangement.

Mr Negline—Yes.

Senator SHERRY—I asked the tax office this morning how much revenue they collect from this measure and whether they had any idea about what they might be missing out on. We are told that there would be a significant number of people who are either not declaring their money or not transferring it. Firstly, can you comment on whether or not the tax office should have a better understanding of the figures involved here. Secondly, as the tax office cannot tell us, do you have any idea as to what the figures are?

Mr Negline—I do not have any statistical analysis. Anecdotal evidence would suggest that there is probably quite a lot of money that is sitting offshore waiting to come in. What I mean by ‘offshore’ is that money is probably sitting in funds that people—once they found out about the provision—are refusing to transfer into Australia, rightly or wrongly. I cannot gauge how much is actually brought into Australia and properly declared for income tax purposes; I do not know about that.

Mrs Orchard—I have no idea either.

Senator SHERRY—Do you think it is a good thing that we do not know? It seems to me that there has been no attempt to find out. We have a law on the statute books that is supposed to collect a certain amount of money—we are not sure how much. Wouldn’t it be a good thing for the tax office at least to try and find out; otherwise, how do we know whether the law is effective, ineffective, half-effective, what the tax office is collecting, how we can collect more tax and how we can change the regulations to make things simpler, hopefully?

Mr Negline—As we know, the tax office deal with many millions of tax returns every year. The fact that this provision is given only minor mention in the *TaxPack* perhaps indicates that in the global scheme of things the incidence of transfers into Australia is, in number terms, not that high. That needs to be put in context: one per cent of taxpayers is 100,000 people. To my mind, that is a lot of people but, in the global scheme of things and the number of tax returns they need to deal with, it is not very many.

Senator SHERRY—But the other issue, which I referred to this morning, is that there is a trend towards a variety of compulsory private pension systems right around the world now—Hong Kong has just introduced it recently. With that trend, it would seem to me that we need to streamline the system to identify what the problems are and how we can maximise revenue consistent with the Australian legislation.

Mr Negline—As I said in my opening remarks, as the occurrence of people moving in and out of Australia increases in number and frequency—

Senator SHERRY—That factor, as well.

Mr Negline—somewhere along the line there will have to be some sort of measurement process that is more clearly defined.

CHAIR—You talk about double taxation, but doesn't section 27CAA give a credit to prevent that double taxation arrangement?

Mr Negline—The incidence of double tax is the circumstance where the funds are transferred from one fund to another overseas—which is what we were talking about a few moments ago—and then brought into Australia. So you get taxation at the point of transfer from one fund to another, technically while overseas, and if that money is then bounced into Australia you get another incidence of tax.

CHAIR—Wouldn't the accumulation only apply to the increase from the last taxation point and not from coming into Australia?

Mr Negline—No, it is from residency.

CHAIR—But wouldn't you get a credit in respect of the taxation paid by the internal transfer, when that was made?

Mrs Orchard—There does not seem to be one.

Mr Negline—No, there does not seem to be a provision for that.

Mrs Orchard—It works in a similar manner to when a benefit leaves Australia and comes back again.

CHAIR—Some consultants advise the other way—that there is a credit available. So maybe that is something that we really should get clarified.

Mrs Orchard—Yes, we can do that.

CHAIR—Thank you very much for drawing it to our attention.

Mr Negline—Maybe there is an internal mechanism within the tax office that allows for that credit.

CHAIR—I think it is a matter—and thank you for raising it—that we need to explore to ensure there is some mechanism to provide a credit, certainly; otherwise there would very much be an impact of double taxation, as you quite rightly say. Have you any other matters that you would like to raise with the committee?

Mr Negline—No.

Mrs Orchard—Not at this stage.

CHAIR—Basically, you are suggesting that we should have within our recommendations one to widen the scope of the foreign investment funds, exclusively employer sponsored funds, to include other personal retirement funds? We would have to be careful on that, wouldn't we?

Mr Negline—Yes, you would, because everything will turn on the definition of 'retirement fund' and, of course, our definition of 'retirement fund' is not going to be exactly the same as that in other jurisdictions. So, yes, you would need to be careful about how that was defined.

CHAIR—We would have to have 'approved' or some such word—or 'complying type funds'.

Mr Negline—The ICAA submission does allude to the fact that, in the institute's view, the benefit that is transferred into Australia should be treated as an ETP and split according to your pre- and post-1983 components and service period.

Mrs Orchard—Growth would thereby be taxed at the 15 per cent contribution tax—so it is treated as an untaxed element when it comes in. It gets the contribution tax and is then taxed as a normal benefit when it leaves the fund. What that does is bring the tax payable on the total benefit down to be more in line with other superannuation moneys rather than the personal income tax rates.

CHAIR—Thank you very much for your presentation.

[3.06 p.m.]

BOWMAN, Mr Jeff, International Tax Consultant, Montfort International PLC

DAVIES, Mr Geraint, Managing Director, Montfort International PLC

CHAIR—Welcome. Thank you very much, Mr Davies, for your more detailed submission, which teases out a number of the issues that you raised with us when we met with you in Melbourne. Also, thank you for the case studies that you included in that further submission. We very much appreciated your submission, particularly the case studies, because it did put some flesh on some of the bones. Do you have any comments to make about the capacity in which you are appearing before the committee today? That will give readers of the *Hansard* record some idea of the direction from which you are coming.

Mr Davies—The reason for our appearance today is our years of experience in handling the Antipodean-Australian, Anglo-Australian issues facing those people who enter Australia holding overseas investment funds, primarily in the area of pension funds or overseas superannuation arrangements. We have for a number of years been dealing in this area and have seen substantial numbers of options and considerations that face these people and have worked to assist them in terms of their financial and retirement planning over the years as financial planners in the UK and with previous experiences in Australia. I run a firm that has helped, as a team effort, with our submission, and taxation areas have been covered by Jeff Bowman, who I believe I should now hand over to to identify other issues or to state the issues as our reason for involvement.

Mr Bowman—I have the Australian accent. I have been working in London for 15 years. Some of the issues that I have been involved in cover the movement of people to and from Australia, so I have been thinking about these sorts of issues for quite a long time. Montfort International is one of my clients.

CHAIR—Thank you very much. We have a booking through Telstra, the telephone company in Australia, which means that this presentation must conclude at 3.30 p.m. We invite you to speak to your submission, but we would also like the opportunity to ask a few questions. Given this time constraint, we need to make sure that we are not cut off in full flight. We do appreciate this. Perhaps one of you might like to briefly highlight the issues, and please identify yourself before each of you speaks.

Mr Bowman—We see section 27CAA as a problem on two fronts: firstly, it is an impediment to migrants coming into Australia and to returning Australians, and we have shown you examples of why it is a tax impediment to them bringing their funds into Australia for management. As a result, Australia misses out on managing those funds, and that is quite a lucrative industry. Investment management is a big industry in London and New York. Secondly, 27CAA affects the personal circumstances of those individuals in that it is quite a penal tax and, as a result, there are large compliance issues. Basically, when people are faced with a large tax slug out of their personal resources, in some instances they just will not pay it.

Mr Davies—The issues that we see in financial planning and structuring which interact with tax issues for people departing centre very much on customer ignorance. A lot of Australians also have this ignorance of the regulations and fail to appreciate the way the systems cross-thread. We have seen it from other countries as well, but primarily from the UK side, the ignorance is so widespread that we have even seen major organisations such as the National Health Service and the Teachers Pensions Agency in the UK give information to their departing members that conflicts with the rules in the UK which, in turn, conflicts with Australian rules.

There are a substantial number of options available to these people, but the bias of people coming into Australia from overseas is an ignorance of what actually happens in Australia. Therefore, one finds that in many cases the advice they receive may be to move the funds to Australia immediately whereas the benefits held within the schemes might be best held within the UK and not actually transferred to Australia, because the scheme benefits are superior to the benefit that could be gained by moving the funds into Australia. We also have experience of people who do not even know they have pension funds in the UK and are surprised when they go to Australia and these benefits suddenly appear. The lack of understanding of the systems— from both the UK and Australian sides—is a serious issue.

CHAIR—Do you think those problems have been increased as a result of the move within the UK to personal arranged plans which are equivalent perhaps to our master trusts in Australia? They are hybrid arrangements; they are not necessarily just employer funds which are exempt under our foreign investment funds exemption rules.

Mr Bowman—In a way, yes. The personal pension industry is quite large and personal pensions are within the foreign investment fund rules, whereas employer sponsored funds are not. The real issue with 27CAA, I think, is that it is a penal tax, whereby tax avoidance is not an issue for most people, certainly with foreign investment fund assets coming from the UK. It is very hard, if you are outside the UK, to enter into a UK personal pension because of the regulatory environment. So when people have such a pension and they have only a six-month window to move their funds to Australia, they face a penal tax situation if they do not do it within that time frame, when it might make commercial sense—because of the currency or the stock market conditions—to wait. They are being forced to do something when there is really no tax avoidance at stake. I think the FIF tax is just another layer of complexity and an unwanted issue they face.

Mr Davies—Both Jeff and I have seen this happen with pension schemes in the UK where the member is trying to get the funds across. The particular cases I refer to are the ones where it is in the best interests of the member to move the funds. In those cases, where the benefits are examined and considered, as is the prerequisite of UK financial planning where you always check and examine the options before you make a move, we have people who with every good intention require the funds to be moved. However, due to ignorance of the home scheme in the UK and of the processing of the scheme benefits, through no fault of the scheme member, the funds just cannot be moved within the six-month period. In many cases these are people who are panicking and who wish to move the funds as quickly as possible, and many people today, I believe, are moving them without consideration of the benefits that are held. That means they do need a much longer time frame to make up their minds for what is a most important part of their lives. They have worked many years to accumulate these benefits. They do not wish to

break the rules; they do not wish to break the law. But they do not wish to create a tax liability. They just need time to plan their affairs more fittingly towards their long-term needs.

Senator SHERRY—Thanks very much for the case studies that I asked for, Mr Davies, when you were in Australia. They are excellent first-class material. I have just two questions. Firstly, is it possible to transfer employer and personal benefits from the UK to an Australian superannuation fund without removing UK tax if it is applicable?

Mr Davies—There is no UK tax on exit from a UK scheme. However, one of the factors is that the scheme benefits cannot necessarily be transferred overseas.

Senator SHERRY—What is the impediment, if it is not tax?

Mr Davies—The impediment relates to regulatory reasons. Also, we are dealing with a case at the moment where a person has died and the benefits have now been forced to be paid as an income because of the UK regulation. The regulation overseas has to be factored in.

Senator SHERRY—What is the tax situation in the UK where the benefit is transferred? Let us say an individual is coming to Australia and the benefit is transferred direct to the individual. Can that be done?

Mr Davies—Benefits cannot be transferred directly to the individual unless the person has reached the age of retirement. The age at which the funds can be released is 50—and that is the earliest—but if they do take them early they invariably receive a penalty. I must add that 50 is not always the earliest a person can take them. They can be taken at 30 or 35, depending on the trade—say, for a sportsman—and I think it is 45 for a money broker. Psychiatrists also have a different age at which they can take their funds.

Senator SHERRY—They must be high-risk occupations. What about your own occupation?

Mr Davies—Underpaid!

Senator SHERRY—Thanks. That was all I wanted to find out.

CHAIR—It has been suggested as a scenario that payments be paid through the medium of the Australian Taxation Office. Would that give greater assurance to the pension funds in the UK who have some difficulty interpreting Australian requirements and their interaction with the UK arrangements? Would that give a greater level of assurance? Should we be introducing arrangements in international tax treaties forums or, for example, should we have a protocol adopted by the Australian Taxation Office or the Australian prudential regulator? These could be on a web site in Australia or even on a web site in the UK. These are options. How do you view each of those three suggestions?

Mr Bowman—On the international tax treaty route or protocol, as it is not really a double tax situation—as far as the UK is concerned, there is no tax levy if it is fund to fund—and as international treaties take a while to get in place or even amend, I do not see that being effective. I do not see the ATO route being of benefit because the fund-to-fund transfer is a sort of a well-oiled path, and there is nothing wrong with that. The compliance issue is, as we have

summarised with example 6, that the UK member going to Australia has to be employed or self-employed and has to sign a declaration that he or she does not intend to live or work again in the UK. That is basically the regulations in a nutshell. It is sort of on a self-assessment basis, where the people organising a transfer have to do a lot of checking to ensure that it is correct. The easiest solution—as per our one—is to take the six-month limit off and make it, we would think, 10 years.

Mr Davies—Our examples are examples of some of the situations that we have seen and we have identified a number of other scenarios which affect people with other combinations of investments. We just look at this and see that there is a need to look at all different types of considerations. The time frame that it takes to assess a person's issues is why we recommended that perhaps a register of pension funds should be established. That would mean that these people could have time to consider their situations without having to make rushed decisions or face the quandary of the pregnant woman who does not want to work but still obtains a tax liability, as does her child. The rules outside Australia prohibit the transfer of pension funds overseas unless certain conditions are met.

CHAIR—Can the personal pension fund moneys not be transferred to Australia?

Mr Davies—They cannot if the person is a child because you have to be employed or self-employed. The pregnant woman is not employed. The funds can be transferred but recently we saw a scheme with a fund value of £180,000 and a £100,000 transfer value. If only they had more time, with a reducing currency rate against the dollar, they could time their extraction of the funds or reveal the funds to Australia. Therefore, Senator Vanstone's efforts in respect of matching data collection through her area would show that Australia does bring these funds within their remit and that they do not escape the attention of the Australian taxing and social security provisions. Scheme by scheme, it may be best to transfer some schemes and not others. This becomes a timing issue and whether the person genuinely does want to move to Australia on a permanent basis.

CHAIR—Ignoring the time problems, can we get clarification in relation to the status of these personal retirement fund plans which are similar to our master trusts in Australia? Can they be transferred from the UK to Australia?

Mr Davies—Yes they can.

CHAIR—You mentioned earlier that while they can be transferred, there are certain restrictions that you have to be either employed or self-employed. Is that right?

Mr Davies—That is one of the restrictions.

CHAIR—In the case of the pregnant lady who is not working and not self-employed, those funds cannot be transferred. Is that right?

Mr Davies—That is correct.

CHAIR—So it is employment related. There is a nexus with employment there.

Mr Davies—It is correct that there is a nexus with employment.

CHAIR—So you are absolutely certain that these personal plans can, providing they meet the criteria, be transferred to Australia?

Mr Davies—In 99 per cent of situations. There are still some schemes which have prohibitive conditions that stop the transfer. Those are schemes known as section 32s.

CHAIR—We would like to thank you very much for getting up so early to take this call. We understand it is approximately 5 a.m. or thereabouts in the UK so we do appreciate the fact that you have risen early to participate in our inquiry. We thank you very much for your input through your personal presentation before the committee in Melbourne, for your presentations and for participating via this teleconference here today. On behalf of the committee, I take this opportunity to thank all witnesses who have given evidence today. The committee will take evidence next week in Sydney.

Committee adjourned at 3.29 p.m.