The Parliament of the Commonwealth of Australia

Advisory Report on the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013

House of Representatives
Standing Committee on Economics

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Canberra

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Chair's foreword

The committee supports the passage of the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013, which makes important and beneficial taxation and superannuation changes. It also recommends that the Treasury undertake further consultation with industry groups on an aspect of Schedule 5 of the Bill.

There are eight schedules in the Bill: Schedule 1 (definition of a documentary), Schedule 2 (ex-gratia payments for natural disasters), Schedule 3 (GST instalment system), Schedule 4 (adding six groups to the deductible gift recipients list), Schedule 6 (Government superannuation co-contribution for low income earners), Schedule 7 (consolidating the dependency tax offsets) and Schedule 8 (Taxation of Financial Arrangements).

The committee did not receive any submissions on Schedules 2, 3, 4, 7 and 8. The report focuses on issues raised on Schedules 1, 5 and 6.

Schedule 1 defines a 'documentary' for the purpose of accessing film tax offsets, and makes explicit that game shows are not eligible programs. Currently, there is no definition of a documentary in the *Income Tax Assessment Act 1997.* The definition of a documentary to be inserted is based on the Australian Communications and Media Authority Guidelines, as was used by Screen Australia prior to the *Lush House* case. In the committee's view it is a reasonable response by the Australian Government to reinstate the definition that Screen Australia had previously used in administering the Producer Offset.

The committee noted industry stakeholder concerns that the definition lacks flexibility. The committee believes there is a need for ongoing dialogue between Screen Australia and industry to ensure that the application of the definition in Schedule 1 remains responsive to the evolving documentary genre.

Schedule 2 exempts from income tax the ex-gratia payments made to people affected by natural disasters in Australia during 2011-12 and 2012-13. It is warranted to extend these disaster assistance payments— and their tax exempt status—to New Zealand citizens holding non-protected special category visas who were affected by these disasters.

Schedule 3 enables eligible businesses to continue to pay GST instalments if they subsequently move into a net refund position. It will allow businesses to continue to make their Business Activity Statements annually and retain the cost advantage of not having to submit a quarterly statement. Entities that are not paying GST by instalments and are already in a net refund position remain ineligible to use the instalment option.

Schedule 4 adds six entities to the list of deductible gift recipients, making donations to these organisations tax deductible.

Schedule 5 will provide a legislative basis for identifying and merging multiple superannuation accounts within the same fund. A number of super funds are already merging multiple accounts within the same fund.

In evidence to the committee, groups unanimously supported the intent of Schedule 5 to reduce the amount affected members pay in multiple sets of administration fees and insurance premiums, and consequently increase retirement savings.

Proposed subsection 108A(1) will require super trustees to merge multiple accounts within the same fund if they reasonably believe that it is 'in the best interests of the member to do so'. Some industry groups expressed concern that the wording of 108A(1)(c) could place undue liability on trustees by obligating them to examine each individual member's best interests, rather than on a general trust fiduciary law basis, which is understood as acting in the collective best interests of members.

The committee's view is that Schedule 5 is making an important change to help super members maximise their retirement savings, but recommends further Treasury consultation with industry groups to ensure that undue liability is not being inadvertently placed on trustees who are working in good faith for the benefit of their members.

The committee understands that given the breadth of the task proposed, automated processes for merges will need to be judiciously employed. Funds will need to develop procedures to assist them to identify members whose needs are best served by the individual consideration of their circumstances. To this end the committee urges the Australian Prudential Regulation Authority to provide funds with guidance on circumstances which should trigger individual consideration of what constitutes a member's 'best interests'. Where funds are dealing with complex cases, the committee believes trustees should seek input from the affected members.

Schedule 6 will make changes to the government superannuation co-contribution for low income earners, including reducing the rate of co-contribution from 100 to 50 per cent.

Schedule 6 scales down the operation of the government super co-contribution, as part of wider superannuation reforms to ensure that schemes are well targeted and effective. The scheme will remain, albeit at a reduced rate, for people that are in a position to make super contributions from their net pay. The 50 per cent contribution rate is still a generous matching rate of return for extra contributions made.

Further, the Government and industry groups agreed that the low income superannuation contribution measure is better targeted, as it helps build super balances and does not require the low income earner to make additional contributions.

Schedule 7 will consolidate eight existing dependency tax offsets into a single tax offset that is only available to taxpayers maintaining a dependant who is unable to work due to invalidity or carer obligations. Certain features of the current arrangements will remain. Taxpayers eligible for the zone, overseas forces or overseas civilian tax offset will retain their offset and concession entitlements. Taxpayers will also remain eligible to receive more than one amount of dependency tax offset, as long as it is in respect of a different dependant.

Schedule 8 makes amendments to clarify and refine the operation of certain aspects of the Taxation and Financial Arrangements regime; lowering compliance costs and proving additional certainty to affected taxpayers. It is anticipated that it will 'protect a significant amount of revenue which would otherwise be at risk'.

On behalf of the committee, I thank the organisations that assisted the committee during the inquiry through their submissions and participating at the hearing in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP
Chair

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Membership of the Committee

Chair	Ms Julie Owens MP	
Deputy Chair	Mr Steven Ciobo MP	
Members	Hon Chris Bowen MP (from 22/04/13)	Hon Joel Fitzgibbon MP
	Mr Scott Buchholz MP	Dr Andrew Leigh MP (to 22/04/13)
	Mr Stephen Jones MP	Mr Craig Thomson MP
	Ms Kelly O'Dwyer MP	

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Ms Samantha Mannette
Inquiry Staff	Ms Zoë Smith
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	Ms Carissa Skinner

Terms of reference

On 21 March 2013 the Selection Committee asked the Committee to inquire into and report on the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013.

Under Standing Order 222(e), Selection Committee reports are treated as having been adopted by the House when they are presented.

List of abbreviations

AAT	Administrative Appeals Tribunal
ACMA	Australian Communication and Media Authority
ATO	Australian Taxation Office
DGR	Deductible gift recipient
GST	Goods and services tax
GST Act	*A New Tax System (Good and Services Tax) Act 1999*
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
LISC	low income superannuation contribution
MYEFO	Mid-Year Economic and Fiscal Outlook
QAPE	qualifying Australian production expenditure
SIS Act	*Superannuation Industry (Supervision) Act 1993*
TOFA	Taxation of financial arrangements
TOFA Act	*Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*
the Bill	Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013

Recommendation

2 Issues in the Bill

Recommendation 1

The House of Representatives pass Schedules 1, 2, 3, 4, 6, 7 and 8 of the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2013. In relation to Schedule 5, the Australian Government should consult with industry groups to ensure that undue liability is not being inadvertently placed on trustees who are working in good faith for the benefit of their members.