

6 November 2003

Senate Economics Committee  
c/- Dr S Bachelard  
Senate  
Parliament House  
Canberra ACT 2600

Dear Senators

**re: Supplementary submission to the Senate Economics Committee—Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 and related draft Regulations**

Our submission of 24 October 2003 to the Senate Economics Committee commented on the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003. Since that date, the scope of the Committee's enquiry has been extended to cover related draft Regulations<sup>1</sup> which had been the subject of a separate public consultation<sup>2</sup> by the Department of Treasury.

We attach a copy of our submission to the Department of Treasury on the draft Regulations for consideration by the Committee.

*Summary of AAS position*

As stated in our original submission, AAS supports the policy of allowing single-income couples the same tax benefits as dual-income couples with the same total income. However, we do not believe that the Bill in its current form will fulfil the policy intent in the most efficient or equitable manner.

In particular, it would result in a higher than necessary level of costs for superannuation fund members and the superannuation industry, with a resulting reduction in members' end benefits. In addition, the administrative complexity of the proposed method of annual splitting, in a superannuation environment which is already confusing for much of the population, would greatly limit its effectiveness.

We submit that Option 4 (benefits splitting) outlined in Chapter 2 of the Explanatory Memorandum to the Bill would provide a significantly better outcome for both superannuation fund members and the industry.

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<sup>1</sup> Draft Superannuation Industry (Supervision) Amendment Regulations 2003, the Income Tax Amendment Regulations 2003 and the Retirement Savings Accounts Amendment Regulations 2003.

<sup>2</sup> The Treasury released draft Regulations on 14 October 2003 for comment by 31 October 2003.

Should this option be adopted, many of our concerns with the Bill and draft Regulations will be alleviated. Nonetheless, we are aware that there is a possibility that the Bill will be passed in its current format.

The attached submission comments on a number of concerns relating to the draft Regulations (many on the basis that annual splitting is introduced as currently proposed):

- the relationship between the new superannuation splitting legislation and the existing disclosure requirements under the Superannuation Industry (Supervision) Act 1993 and the Corporations Act 2001;
- restrictions on splitting contributions/benefits with a spouse who has fulfilled a condition of release;
- various issues relating to annual splitting;
- various technical drafting issues.

Please do not hesitate to contact me on (02) 8837 5050 (or our consultant John Maroney on 0412 115 663), if you would like to discuss any aspect of our submission.

Thank you once again for the opportunity to comment on the Bill and draft Regulations.

Yours faithfully

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## **Australian Administration Services submission to the Department of Treasury—*Draft Superannuation Splitting Regulations (October 2003)***

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### ***Introduction***

Australian Administration Services (AAS) welcomes the opportunity to comment on the draft Income Tax Amendment Regulations 2003 and the draft Superannuation Industry (Supervision) Amendment Regulations 2003 released for public comment on 14 October 2003.

The proposed Regulations are very important both to AAS, one of Australia's leading superannuation administrators, and to our clients.

This submission assumes that the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 is passed in a similar format to the version currently before Parliament.

We have made a separate submission to the Senate Economics Committee<sup>1</sup> enquiry into the Bill arguing that the “annual splitting” method proposed by the Government will not fulfil the policy intent in the most efficient or equitable manner. In that submission we propose, instead, a “benefits splitting” model which would greatly reduce the effect of fees on fund members' end benefits and would be considerably less confusing and complicated for members in an already complex superannuation environment.

We would be pleased to provide more details or discuss our submission further on request.

### ***About Australian Administration Services***

Australian Administration Services Pty Ltd (AAS) provides professional core administration and related customer service to superannuation funds and redundancy trusts. We specialise in services to industry superannuation funds.

AAS is a fully owned subsidiary of KAZ Group Limited, the leading Australian specialist provider of information technology and business process outsourcing services.

Through 700 employees, based in six states, AAS provides superannuation administration and customer services to about 47% of our target market. Our services are provided to:

- 36 funds and subfunds;
- 300 individual trustees and fund executives
- 3.4 million members
- 165,000 employers.

AAS is ISO 9001 certified as a Quality Endorsed Company.

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<sup>1</sup> Our submission is available from the Senate Economics Committee website,  
[http://www.aph.gov.au/Senate/committee/economics\\_ctte/super\\_splitting/submissions/sub14.pdf](http://www.aph.gov.au/Senate/committee/economics_ctte/super_splitting/submissions/sub14.pdf)

## **Detailed submission**

Please note that while we use the term “contributions splitting” in line with the explanatory material issued with the regulations, contribution splits are in fact a special type of benefit payment.

### **Meaning of “annual” splitting**

The Explanatory Memorandum to the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 indicates that the “annual splitting” method was chosen in part to reduce the administrative burden on superannuation funds.

We note that the draft regulations allow each member of a superannuation fund to split *that person’s individual contributions* (benefits) once annually.

Under draft SIS Regulation 6.44(1)(i), once a member has requested that the fund split the previous financial year’s contribution, the Fund must process the split within 90 days if the request is received between 1 July and 31 March (and may do so if the request is received between 1 April and 30 June). In other words, the draft regulations would result in funds being required to process “annual” splits regularly throughout the year.

We submit that it would be preferable to allow superannuation *funds* to process contribution splits annually rather than allowing each *member* to request a split at a different date. For example, members could be allowed to request contributions splitting up to 30 days after receiving their annual benefit statements (periodic information provided in line with the Corporations Act 2001).

The economies of scale from processing all members’ splits together as a batch is likely to allow for lower fees and a reduced compounding effect of fees on members’ end benefits.

### **Fixed or Percentage**

The draft regulations limit splittable contributions to:

- (i) 70% of deductible contributions and
- (ii) 100% of undeducted contributions.

Our understanding from draft Regulations 6.43 and 6.44 is that a member could only make one contributions splitting request annually (either as a fixed amount or a percentage) and that the request would apply to the total splittable contributions received for a year.

Presumably, the amount transferred to a member’s spouse will be pro rated between the deductible and undeducted components of the amount transferred.

However, we note that some other parts of the draft regulations and explanatory material (e.g. the note to 6.43(2)) could be interpreted to allow members to request different splitting amounts/percentages for their deductible contributions and undeducted contributions.

We recommend that this issue be clarified.

### **Potential effect on other members**

“Contribution” splits are in fact a special type of benefit payment based on the amount of contributions received during a year.

The amount of the split is limited to 70% of deductible contributions to allow for contribution tax and the superannuation surcharge.

Despite this, it would still be possible (for example, as a result of insurance premiums, administration fees, and/or negative investment returns) for a member's balance at the time of a split to be *less* than the sum of the contributions received during the previous year. In such a circumstance, the draft regulations would still require a benefit payment in line with the member's instructions. This would result in a requirement for a fund to subsidise one member's contribution splitting from the accounts of other members of the fund.

We recommend that splitting be limited to each member's benefit entitlement in the fund at the time of payment.

## **Member Benefit Protection**

Draft regulation 6.44(1)(g) and 6.44(1)(h) give a fund the option not to split contributions if the applicant is a protected member (or would become protected as a result of the split). We support this restriction on equity grounds as it would prevent abuse of the member benefit protection provisions (which is a compulsory cross-subsidy of members).

We note that there is no requirement for a minimum contribution split (transfer) to ensure that the receiving spouse will not be a protected member.

We recommend that Superannuation Industry (Supervision) Regulation 1.03 be amended to clarify the protected status of the receiving spouse.

## **Deductible contributions**

Superannuation splitting is limited to 70% of "deductible contributions".

Draft regulation 6.41 defines "deductible contribution" as:

- “a contribution that is a deductible contribution for
- (a) the *Income Tax Assessment Act 1936*; or
- (b) the *Income Tax Assessment Act 1997*.”

Presumably this refers to contributions for which a deduction is allowed for the contributor under the tax acts. The term "deductible contribution" does not appear to be defined in the quoted Acts.

We note that superannuation funds are generally aware of the source of a contribution (e.g. from an employer or a member) and whether the contribution is taxable within the fund. Funds are not generally aware of whether the contribution is deductible to the contributor.

We recommend that the Treasury consider replacing the concept of "deductible contributions" in the splitting regulations with that of "taxable contributions" (i.e. contributions which are known to be taxable on receipt by the Fund), subject to suitable consideration of the deduction available under section 82AAT of the Income Tax Assessment Act 1936 for substantially self-employed individuals.

## **Conditions of release**

To avoid circumventing the preservation system, draft SIS Regulation 6.45(1)(c) does not allow contributions splitting if the receiving spouse has already satisfied any of the following conditions of release: retirement, permanent incapacity, reaching age 65 or death. The applying member must include a statement to confirm that this has not occurred. (In addition, the trustee must have "no reason to believe that the statement is untrue".)

We note that as well as the administrative tasks required to ensure that the relevant conditions have been met, additional communication will be required to ensure that members understand the relevant concepts for their applications.

We query the appropriateness of this restriction with respect to the policy aim of contribution splitting (i.e. to allow the same superannuation benefits for single income and dual income couples). Furthermore, it seems inconsistent not to allow contributions to be split with a spouse who has met a condition of release when that same spouse would be allowed, or even required, to make additional contributions. For example, this would be the case if the spouse had ceased work due to ill health or was over age 65 and gainfully employed.

## **Role of Spouse and Member Disclosure**

We note that the existing fund member is required to provide all information about the receiving spouse (e.g. name, confirmation of not meeting a condition of release) and the receiving spouse's superannuation fund.

We recommend consideration of requiring the receiving spouse to have a role in contributions splitting. For example, the receiving spouse should sign a statement that he or she has not satisfied any of the appropriate conditions of release and should provide details of his or her fund.

Superannuation funds must meet considerable disclosure requirements imposed by Chapter 7 of the Corporations Act 2001. This includes requirements relating to application forms and Product Disclosure Statements, and to ongoing reporting. The overlap between the Corporations Act and the proposed superannuation splitting legislation does not appear to be addressed in the draft Regulations.

The Corporations Act requires considerable information to be provided to members and potential members of superannuation funds. However, the proposed regulations appear to require funds to create an interest for a member's spouse on request (regardless of whether or not the Corporations Act disclosure requirements have been met).

We recommend that the relationship between the Corporations Act and superannuation splitting provisions be reviewed. In particular, we recommend providing exemptions from much of the Corporations Act disclosure requirements for superannuation contribution splitting payments. For example, it should be possible to allow a receiving spouse who joins the original member's fund to rely on the Product Disclosure Statement provided to the original member.

We also note that additional member communication materials will be required to explain to members the effect of contributions splitting. This would necessarily be limited to instructions about applying for a split, but could also include reference to effects of splitting on benefit entitlements (e.g. reduction in tax benefits from pre-July 1983 service).

## **Timing of Annual Split**

Draft regulation 6.44(1)(f) prevents contributions splitting if the trustee has already "rolled over, transferred or allotted an amount of the applicant's benefits for the benefit of the applicant's spouse *in the financial year in which the application is received.*"

It is possible that this drafting could inadvertently prevent splitting of contributions which should theoretically be splittable.

For example, consider the case where a member makes the following two requests for contributions splitting:

- (i) 2003/04 contributions: request to split received on 30 June 2005
- (ii) 2004/05 contributions: request to split received on 5 July 2005

The current drafting of proposed regulation 6.44(1)(f) would prevent both splits being processed in the 2005/06 financial year.

To avoid these timing issues, we recommend rewording this subregulation to prevent a member providing more than one application *in respect of contributions made in a particular financial year*.

We also recommend amending draft regulation 6.43(1) to allow members to request splitting for contributions in the “current or previous financial year”. It is likely that some members will request contributions to be split, for example, in June as they finalise their finances for the year. Under the current draft regulations, such an application would have to be rejected and reissued in July.