AIST SUBMISSION TO THE SENATE STANDING COMMITTEE ON ECONOMICS

Inquiry into the provisions of the *Tax Laws Amendment (Simplified Superannuation) Bill* 2006 & five related Bills

19 January 2007

A. AIST and its Members

1. The Australian Institute of Superannuation Trustees (AIST) is a national not-for-profit organisation whose members are superannuation fund trustee directors and officers of industry, public sector and corporate superannuation funds who operate with a representative Trustee Board of Directors. AIST provides professional training, consulting services and support to trustee directors and staff to help meet the challenges of managing superannuation funds and advancing the interests of their fund members.

   1.1 As at the end of 2006, AIST has approximately 650 members from 120 Trustee Companies and Organisations. AIST members represent a significant number of decision makers in the superannuation industry, including member and employer Trustee directors, CEOs and other Executive Management from superannuation funds, as well as representatives from related organisations which service the superannuation and financial services industry.

B. AIST's Submissions

AIST SUPPORTIVE OF THE SIMPLIFICATION OF SUPER

2. AIST is generally supportive of the intent behind the reforms instituted by the Government in relation to the simplification of super and believe that many Australians reaching retirement age will benefit from these changes.

   2.1 Going forward, AIST would like to see further Government initiatives which will assist working Australians to achieve an adequate retirement income.

   2.2 Whilst AIST are supportive of the changes, we would like to point out that many working Australians are unlikely to benefit from the changes in the short term.

   2.3 For example, research indicates that the average superannuation account balance is approximately $80,000. Given that members who had reached their preservation age currently are entitled to receive $135,590 tax free (from their post-1983 component), then the "average Australian" would have received their benefit tax free in any event, regardless of whether over 60 or not. AIST would recommend that in future years, the Government consider these issues in developing future policy.

3. AIST would like to commend Treasury on its excellent work in drafting the legislation and has been pleased to be involved in the confidential Treasury Reference Group discussions with other industry members in relation to the content of that draft legislation. AIST is aware of how much work has been required by Treasury (and how much more to go) and is impressed with its perseverance and dedication.

4. AIST has provided feedback to Treasury via these Reference Group meetings and therefore does not have a lengthy submission to make in relation to the Bills.

5. Whilst the intent of the legislation will be of benefit to many members of superannuation funds, (particularly those reaching retirement age) the issues surrounding no-tax file number quotation is of deep concern to AIST, given the effect it will have on both superannuation funds and its members. Given the time constraints, AIST's submission will be limited to this issue and a similar issue relating to death benefits.

NO-TAX FILE NUMBER ISSUES

High incidence of non-quotation of TFNs

6. AIST's members have reported that the membership of their superannuation funds have an extremely high incidence of non-TFN quotation.

6.1 Anecdotally, some superannuation funds have non-TFN quotation as high as 60-70%. It is not uncommon for superannuation funds to have a non-quotation rate of approximately 50%.

6.2 In some industry funds, and in most Public Offer Funds, members can be deemed to have joined the fund on receipt of a contribution from an employer. Some members may never complete Membership Application Forms, and as such, the Funds may not receive a member's TFN for years after the member joins the fund, or may never receive one.

6.3 Contributions from employers (especially large ones) are often received in bulk for tens, or hundreds, of employees. The information which accompanies these contributions are generally only the members' names, dates of birth, and addresses. But not TFNs.

7. The rules, as drafted, provide that TFNs need to be received by the Fund by 1 July 2008. However, in practice, because the tax will be payable upon exit from the Fund, if a member exits between 1/7/07 (when the legislation comes into effect) and 30/6/08, then the Fund will be required to track whether TFNs are recorded. (Also to track whether it can accept non-concessional contributions for members.)

8. So whilst the legislation provides that the no-TFN tax will not be payable until 1/7/08, systems will need to be in place to track this tax (and whether the non-concessional contributions can be received) from 1/7/07 (especially if a member exits between 1/7/07 and 30/6/08.

9. Therefore, AIST believes the Government should consider providing relief to comply with the no-TFN quotation tax regime until at least 1 July 2009. This would allow superannuation funds, the ATO and other interested parties to conduct a wide-spread education campaign to encourage members and employers to quote their TFNs to the superannuation funds and thereby reduce the tax imposed. Overcoming member apathy in obtaining TFNs will be one of the largest challenges facing the industry.

Reasons why relief to comply should be granted

10. Widespread superannuation administration systems changes will need to be in place from 1 July 2007 to identify superannuation accounts where the member has not quoted their TFN (especially as the benefit may be claimed), as well as a process by which Trustees will be able to identify which contributions have exceeded the contributions caps[1], and whether the Fund can accept the non-concessional contributions.

10.1 AIST members are concerned that there may not be enough time to implement all the changes to their systems and processes in time to be able to identify such contributions in excess of the caps, as well as an inability to obtain TFNs from possibly 50% of its fund membership (among the other changes which will be required).

[1] AIST notes that the Bill requires the remitting of no-TFN tax to the ATO by 30 June 2008, however, systems will need to be amended by 1 July 2007 to take account of members who wish to exit the fund during the 2007-2008 financial year.

10.2 Both tasks (as well as the other major changes to administration systems) require a mammoth undertaking.

11. AIST believes that the method of obtaining a tax offset for up to four years after the "no TFN contributions income" is paid to the ATO will be onerous and laborious to administer – both from the ATO's perspective, as well as the Trustee's perspective.

11.1 AIST is concerned that this tax may never be recouped by some Trustees, as members may have exited within those four years, or become lost members, or may never quote their TFN. In some instances, that tax will never be recouped.

Possible solutions to these issues

12. AIST would support a stronger matching and communication mechanism through which the ATO would be able to provide superannuation funds with the TFN details of members. A widespread matching project would be of benefit to members, the ATO and superannuation funds.

13. It was suggested at a recent Treasury Reference Group meeting that another possible solution to force employers to provide its employees' TFNs to the ATO (and/or superannuation funds) would be to re-release the ATO Tax File Number Declaration Form and require all employers to have their employees fill out a new form (which has the requirement of quoting the TFN), and that those forms be also sent to the employee's superannuation fund (either directly by the employer, or from the ATO). AIST supports this suggestion.

13.1 AIST believes that there may be greater TFN quotation if the Tax File Number Declaration Form was redesigned and employers were mandated to have their employees complete the new form. The forms could then be required to be provided to the ATO and to the members' superannuation funds by, for example, 1 May 2007, (penalty provisions could apply if they are not provided as required). This timeframe may provide sufficient time to process the TFNs by the superannuation funds.

14. AIST members are concerned about the short lead time involved in these widespread, wholesale changes to the superannuation industry. Any mechanisms which would benefit superannuation funds and administrators to implement these changes would be of enormous benefit to superannuation funds and therefore their members.

Employee recourse against employer for non-quoting of TFN

15. The Bill makes no mention of what, if any, recourse an employee may have against an employer for either intentionally or recklessly not providing the TFN to the superannuation fund outside of the four year notification period.

15.1 AIST submits that this is an area that should be addressed, as there is currently nothing an employee can do directly to recover the loss incurred by an employer failing to provide their TFN to the Fund outside of the four year notification period. The recovery of the interest lost that is provided under the Bill would be unlikely to cover the actual loss incurred. However, if the four year period lapses, then under the current rules as drafted, the employee would have no recourse but potentially expensive litigation through the courts.

16. AIST submits that this matter should be considered by the Government and to consider what options may be available for an employee to directly recoup the loss from the employer, especially outside of the four year period.

DEATH BENEFIT ANOMALIES

Difference in rules between dependants and non-dependants

17. AIST is concerned that there are some differences between the taxation treatment of death benefits between dependants and non-dependants. The most obvious anomaly relates to a situation where the deceased is over 60 years old, and there would be no tax payable on the benefit, if it had been paid to them directly. However, if the recipient of that benefit is a non-dependant, under the new rules, it would be taxed.

18. This appears to be an unintentional drafting anomaly, as it is not logical. If a member dies after age 60 (and would not have been liable to pay tax on that benefit had they taken it directly), AIST submits that there should be no tax payable on that benefit, regardless of whether the recipient is a dependant or a non-dependant. To do otherwise may result in an unintentional windfall for the Government.

C. AIST Contact Information

Should the Committee require further information, AIST would be happy to assist the Committee. The Committee can contact the following persons from AIST:

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