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19 January 2006

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

email: economics.sen@aph.gov.au

Dear Mr Hallahan

Inquiry into the provisions of the Tax Laws Amendment (Simplified Superannuation) Bill 2006

The Taxation Institute of Australia (Taxation Institute) is pleased to provide its preliminary comments to the Committee's inquiry into the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and related bills.

The Taxation Institute welcomes and supports the general principles in these bills to simplify superannuation arrangements for retirees, improve incentives to work and save and introduce greater flexibility in how superannuation savings can be drawn down in retirement.

Whilst we appreciate that the Government is working to an extremely tight timeframe in implementing these changes with effect from 1 July 2007, the timing of the release of the draft legislation in the December/January period has limited the opportunity for analysis and response. Further, it is likely that many of the technical and administrative ambiguities and difficulties are yet to be identified and will not come to light until the new regime has become operational.

Therefore, our attached comments on the draft legislation are not intended to be a definitive catalogue of issues arising, but are indicative of what we believe are some of the current areas of that will need to be addressed. However, we are also mindful that as we have not yet seen the proposed consequential amendment bill that is expected to be introduced into the Parliament when it resumes in February, it is possible that many of the issues we raise in our submission may be dealt with in that bill.

In light of the tight implementation timeframe, the Taxation Institute impresses on the Committee the need for ongoing consultation during the implementation of the new superannuation regime. In particular, we also recommend a two to three year period from 1 July 2007 in which the focus of regulatory bodies, especially the ATO, is on education and support similar to the implementation of the goods and services tax in 2000. This time is necessary to allow for the development of a

degree of clarity around the operation of the new provisions. Neither superannuation providers nor their members should be subject to unnecessary penalties during this period as a result of technical or administrative breaches arising from genuine misunderstanding.

The Taxation Institute is happy to make its representatives available to address the Committee on the technical and administrative issues arising under these bills should the Committee hold any public hearings. We are also committed to working closely with the Government on the implementation of the new superannuation regime and will be available for any further consultations with Treasury and the ATO.

Should you have any queries about any of the matters raised above, please contact Dr Michael Dirkis, the Taxation Institute's Senior Counsel, on 02 8223 0011.

Yours faithfully

Andrew Mills
President

Comments by the Taxation Institution of Australia
to the

Inquiry by the Senate Standing Committee on Economics
into the

Tax Laws Amendment (Simplified Superannuation) Bill 2006 and related Bills

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1. Contribution issues

Deducting employer contributions for former employees (Subdivision 290-B)

In respect of former employees, it is common for an employer to make more than one post-employment payment in respect of that employee (e.g., the employer makes the usual superannuation contribution for the pay period when the employee leaves and then makes a later "wash-up" payment to finalise the former employee's superannuation contribution entitlements).

Subdivision 290-B at present does not appear to support the deductibility of more than one payment (see ss 290-60 and 290-85).

In respect of former employees, it is recommended that the legislation be amended to cover all appropriate contributions for former employees made within a period of say three months following the termination of their employment, provided all the other requirements of the Subdivision are met.

Excess contributions tax (Subdivision 292-G)

There is a timeframe discrepancy under Subdivision 292-G in respect of the payment of an excess contributions tax assessment by an individual that can lead to the inequitable imposition of GIC on that person.

Under the current Bill, if an individual exceeds their contribution limit, any excess contribution tax is technically due and payable by them (not the fund) within 21 of the ATO's notice of assessment, after which time GIC will be applied (s 292-385).

However, this individual also has the option of providing their superannuation fund with a release authority to pay this assessment. In addition to the prescribed time limits within which the individual must provide this release authority to their superannuation fund (s 292-410), the superannuation fund itself also has 30 days to act on the release authority (s 292-415).

A taxpayer who decides to go down the release authority route may find themselves not able to comply with the 21 day payment timeframe imposed on them and subject to additional penalties because the superannuation fund takes the full 30 day period to act on the release authority (as it is entitled to do).

It should be confirmed that the ATO will not apply GIC if a taxpayer has taken appropriate action within 21 days of the notice of assessment to inform their superannuation fund of their intention to provide a release authority within that time.

Transitional contribution limits

The $100,000 transitional concessional contribution limit for a person who turns 50 between 1 July 2007 and 30 June 2012 is not indexed (s 292-20(2) of the transitional provisions in Schedule 1 Part 3 of Tax Laws Amendment (Simplified Superannuation) Bill 2006).

We strongly support the need to have this transitional period and welcome its inclusion in the legislation.

However, failing to adjust this transitional limit in line with the Government's decision to index the concessional and the non-concessional contribution limits not only introduces additional complexity, but also unfairly erodes the value of the transitional limit.

If an index adjustment to the non-transitional concessional contribution limit is made during the period 1 July 2007 – 30 June 2012, it effectively reduces the additional transitional contribution a person can make who turns 50 during this period where the transitional cap is not similarly indexed.

As the current transitional concessional contribution limit ($100,000) is twice the concessional contribution limit ($50,000), to protect the real value of the transitional concessional contribution limit consideration should be given to:

- indexing the $100,000 limit in line with other contribution limits; or
- amending the legislation in some other way such that the transitional concessional contribution limit remains at twice the non-transitional concessional contribution limit as indexed.

2. Taxation of superannuation funds

Tax offset for no TFN contributions income (Subdivision 295-J)

If a higher rate of tax is imposed on concessional contributions because no TFN is quoted, where the TFN is subsequently provided the fund is entitled to a tax offset that is then credited to the relevant member's account.

The Taxation Institute is aware that administrative difficulties will arise for superannuation providers where a TFN in these circumstances is provided after the individual in question is no longer a current member of the fund.

This is an immediate implementation issue for superannuation providers because it will arise the moment a member exits the fund. It also needs to be taken into account in these situations that not all exits from a fund are voluntary.

However, the Taxation Institute recognises that there are a number of sensitivities around solving this potential problem. For instance, addressing this problem by preventing a fund from claiming a tax offset in respect of a non-member of a fund will solve the administrative impasse for the superannuation provider, but it will not necessarily provide protection for the affected individual who will stand to lose the benefit of the tax offset.

The Taxation Institute believes that further consultation with stakeholders on this issue is necessary to ensure that the interests of all affected parties are properly protected. A possible solution may rest in ensuring that the legislation allows the superannuation provider, in these circumstances, to pass on the benefit of the tax offset to the individual's successor superannuation provider, consistent with the transfer of the individual's benefits between providers.

3. Benefit issues

Differentiation between dependant and non-dependant beneficiaries for death benefits (Subdivision 301-E)

The proposed new measures differentiate between the taxation of death benefits to dependants (which will be tax free) and to non-dependants (the taxable component will be taxed at 15%).

This differentiation has the potential to result in inequitable tax treatments under the proposed measures that are merely the result of “the luck of the draw”. It is likely to encourage people to seek arbitrage benefits or to identify planning opportunities to avoid its impact.

For example, a person with both dependant and non-dependant children at the time of their death can pass on the death benefits to their dependant children tax free, but 15% tax will levied in respect of a distribution of these benefits to the non-dependant children. However, it is possible that there will be people who will withdraw (after 60) and recontribute money back into super before 75 to move it from the taxable to the exempt segment, overcoming tax on payments to non-dependant children.

The Taxation Institute acknowledges that this is a complex area with difficulties that extend beyond the proposed new measures contained in this these bills.

For instance, there are existing anomalies between the definition of “dependant” in the Income Tax Assessment Act 1936 (ITAA 1936) and the Superannuation Industry Supervision Act 1993 (SIS Act) that can already result in inequitable taxing results.

The definition of “dependant” in ITAA 1936 only includes a child up to the age of 18 (s 27A(1)), but under the SIS Act, can include any child of the person (s 10(1)), with the result that a superannuation benefit can be paid to an adult child as a dependant under the SIS Act but then the same person is taxed as if the benefit was paid to a non-dependant under the ITAA 1936.

In terms of addressing this problem within the context of the bill in question, the Taxation Institute believes that there should be no difference in the application of rules according to whether the recipient is a dependant or non-dependant. It is recommended that all death benefits should be able to be paid tax-free from 1 July 2007.