

Committee Secretary
Senate Economics Committee
Department of the Senate
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Australia

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11 January 2007

Dear Sir or Madam

Submission on Tax Laws Amendment (Simplified Superannuation) Bill 2006

We refer to the Tax Laws Amendment (Simplified Superannuation) Bill 2006 issued on 7 December 2006. The purpose of this letter is to provide some high level comments on the issues relating to foreign superannuation transfers, arising from the current proposals, as we understand them.

We have set out below our comments on the proposed changes in relation to foreign superannuation transfers, together with our thoughts/proposals to remove what we believe are inequities inherent in the Bill.

Our understanding of Government objectives

In recent years there have been a number of changes to the tax treatment of payments from overseas superannuation funds. The greatest in-depth review and consequent amendments occurred in 2002 and I refer you to the July 2002 report by the Senate Select Committee on Superannuation on this topic. In particular:

- On the first page of the preface, the Committee (Chair: Senator John Watson) made it clear that the transfer of foreign superannuation to Australia should be encouraged rather than punished. The tax system at that time presented a barrier to this and was amended to provide that encouragement.
- Pages 12 and 13 suggest that the scale of the issue, whilst not easily quantifiable, is significant. The Committee noted a media article estimating over 1 million Australian residents have overseas pension funds.

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It is clear that, at that time, the approach of the Committee was to create an environment which encouraged people residing in Australia to transfer their retirement benefits into this country.

We assume this continues to be the intention of Government to this day. However, we also recognise that the current Budget proposals provide greater tax concessions for members of Australian superannuation funds. Understandably, there may be a Government view that Australian residents transferring overseas pensions benefits into the Australian superannuation system should not gain a tax advantage over and above an Australian resident, who had accumulated retirement benefits within Australia over that same period.

Issues associated with this proposal

If our understanding of Government policy, as set out above, is correct, we are concerned that the proposals, in their current form, will penalise residents intending to retire in Australia, through the application of the non-concessional contribution limits, effective from 9 May 2006.

Under the proposed legislation, the non-concessional contribution element of a transferred benefit will generally be made up of the following:

- the benefit entitlement on the day the person first became an Australian resident. It is likely that this has been built up over many years through employer and employee contributions as well as earnings;
- employee contributions since residency; and
- employer contributions since residency, for which a corporate tax deduction would have been denied and also Fringe Benefits Tax applied (if the employee was not an exempt visitor).

In our extensive experience, this non-concessional component - particularly those with long service - will exceed the proposed ongoing limits. The imposition of penal tax on exceeding the limit can result in an overall effective tax rate of up to 77%.

Suggested alternatives

We would like to explore some ideas with you as alternatives which would protect the revenue, maintain equality with long term Australian residents who have built up superannuation in this country, whilst continuing to provide an incentive for people to transfer their overseas retirement benefits here.

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Such ideas include:

- a higher non-concessional contribution limit in relation to transfers from overseas funds;
- a non-concessional contribution limit based on applying the proposed annual limit multiplied by the years of employment to which the benefits relate, rather than the proposal that years of accrued benefits are measured against a single annual limit;
- other than employee contributions, the whole transfer could be fully taxable in the fund at 15% through the member's election process.

Should you wish to discuss this matter further, please call me on 02 8266 8120 or Mike Forsdick on 02 8266 5767.

Kind regards

Yours faithfully



John Fauvet
Partner
Tax Services

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