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Senate Economics Committee
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Inquiry into the Provisions of the
Tax Laws Amendment (Simplified Superannuation) Bill 2006
and Five Related Bills

The Association of Superannuation Funds of Australia Ltd (ASFA) is pleased to make this submission to the Senate Economics Committee Inquiry into the Provisions of the *Tax Laws Amendment (Simplified Superannuation) Bill 2006* and five related bills. These bills were introduced into Parliament on 7 December 2006 and implement the Government's "simplified superannuation" proposals.

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. Our members, which include corporate, public sector, industry and retail superannuation funds, account for more than 5.7 million member accounts and over 80% of superannuation savings.

1. General Comments on the Simplified Super Proposals

The Government's Simplified Superannuation proposals, as announced, represent a major simplification of the superannuation system. For fund members, and those considering contributing to superannuation, the changes will make the system easier to understand. Improved community understanding should enable individuals to plan for their retirement and make better decisions about superannuation.

The removal of benefit taxes for most fund members accessing their superannuation age 60 and over should encourage individuals to contribute to superannuation throughout their working lives. We are also confident that individuals will draw down their retirement benefits in a measured manner, leading to improved retirement outcomes.

Overall the package represents a significant advancement for the superannuation system. Despite the numerous simplifications and improvements for individuals, it is

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also important for the system to be simple to administer. ASFA welcomed the Government's decision that any excess contribution assessment be issued by the Australian Taxation Office (ATO) to the individual taxpayer rather than to the superannuation fund, thus avoiding some of problems encountered with the surcharge.

ASFA supports the use of tax file numbers (TFNs) as a means of identifying superannuation members. Funds devote considerably time and resources to collecting TFNs to assist fund administration and reduce the likelihood of lost members. The TFN requirements in the package, where additional tax will be paid on concessional contributions unless the fund holds the member's TFN, remains a significant administrative challenge for the Government, ATO and industry.

There remains a legitimate concern that many low and middle income earners could be subject to high rates of taxation on their superannuation contributions due to the failure of their employer to appropriately pass on the TFN. A strong and concerted effort by the ATO, including an effective public awareness campaign, will be required to ensure employers are fully aware of their obligations to pass TFNs on to superannuation funds.

ASFA is keen to work closely with Government, Treasury and the ATO to explore and develop appropriate administrative arrangements.

ASFA supports the measures to move superannuation taxation law from the *Income Tax Assessment Act 1936* to the 1997 Act. This should encourage easier navigation. ASFA also supports use of the more "modern" and simpler drafting style of the 1997 Act. However, moving the legislative provisions across will cause some difficulties as individuals who are tasked with navigating and understanding the law will need to come to grips with the new approach.

2. Technical Issues

It is important to realise that some technical difficulties with the new regime will not arise until the regime has become operational. We should anticipate a lengthy "breaking in" period during which Government, Treasury and the ATO must take a pragmatic and consultative approach with industry.

As well, given the newness of the regime and the tight timeframes for implementation, we would strongly encourage a collaborative and pragmatic enforcement approach by the ATO when dealing with superannuation funds. Funds seeking to "do the right thing" in the first year or two of the new regime should not be subject to serious penalties due to misunderstanding of the requirements or lack of clarity.

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2.1 Transitional contribution limits not adjusted

ASFA supports the decision of the Government to index the concessional and the non-concessional contribution limits. The "ratchet" approach suggested by ASFA and adopted by Government balances the need to protect the limits against erosion due to the effects of inflation with the need to maintain simplicity.

However, the current package of bills does not similarly adjust the $100,000 transitional concessional contribution limits for persons who turn age 50 between 1 July 2007 and 30 June 2012. This appears in Part 3 - Main Transitional Amendments to *Income Tax (Transitional Provisions) Act 1997*, from a note that follows S. 292-20(2). This is confirmed in the Explanatory Memorandum page 23, para 1.69.

This decision is disappointing in that it will both erode the value of the transitional limits and introduce unnecessary complexity. Due to indexation, by 2012, the $50,000 concessional contribution limit will likely be $55,000 or $60,000. Not adjusting the transitional limit in a similar fashion has a number of effects. It effectively reduces the amount of additional concessional contribution a person turning 50 can make during the 2007-2012 period. If the non-transitional concessional contribution limit reaches $55,000 for 2011-2012, it effectively reduces the additional contribution a person turning 50 can make in a year from $50,000 to $45,000.

Failing to adjust the transitional limit in line with the other limits also induces additional complexity. Currently, the non-concessional contribution limit of $150,000 will also be indexed to remain three times the indexed concessional contribution limit ($50,000 x 3 = $150,000). At the moment, the transitional concessional contribution limit is two times the ordinary concessional contribution limit ($50,000 x 2 = $100,000). However, once the concessional limit is indexed this simple rule of thumb will be broken – likely causing some confusion about what the transitional limit.

Recommendation One: ASFA recommends that the transitional concessional contribution limit of $100,000 remain at twice the concessional contribution limit.

2.2 Release Authority Timing

When a person exceeds their contribution limit, they will be subject to a penalty tax. To avoid some of the administrative problems associated with the surcharge, the Government rightly chose that the individual, and not the superannuation fund, would receive the tax assessment. To pay an excess contribution limit assessment, the individual has the option of paying the penalty tax themself or else providing their superannuation fund with a "release authority". This release authority directs

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the super fund to pay either the member or the ATO. There is a similar regime for excess non-concessional contribution limit assessments, however the individual will not be able to pay the penalty tax themselves, they will be required to issue the superannuation fund with the release authority.

The timeframes for assessments and release authorities are as follows:
a) excess contribution tax due and payable by individual within 21 days of assessment being given by ATO (292-385);
b) ATO to provide release authority as soon as practicable after assessment has been given (292-405);
c) individual has either 90 days (in respect of excess concessional contribution) in which they may, or 21 days (in respect of a excess non-concessional contribution) in which they must, provide the release authority to the superannuation provider (292-410); and,
d) superannuation provider has 30 days to act on the release authority (292-415).

These timeframes are a concern to ASFA, in particular an individual has 21 days to pay the tax but the superannuation provider has 30 days to process a release, exposing the individual to the general interest charge (GIC) for late payment even if a) the release authority is provided to the individual at the same time as the assessment by the ATO and b) the member immediately forwards the release authority to the provider.

We believe the 30-day period for a superannuation provider to process a release authority is appropriate. However, without some adjustments to the timeframes, individual taxpayers seeking to do the right thing by paying their tax as quickly as possible could be subject to additional penalties because a fund took the full 30-day period to process a request. Though we recognise that the tax is intended as a penalty tax, this approach is unfair on both individual taxpayers and funds. As the individual has been given the opportunity to authorize a superannuation fund to pay the tax liability, sufficient time should be allowed for the fund to meet that obligation without the individual incurring GIC for late payment. Should the 21 day time period for payment not be extended beyond the 30 days allowed for the fund to process the payment request it will create unnecessary problems for funds as they are blamed for any general interest charge and become or be subject to pressure to process authorities more quickly than the 30 days. The creation of small debts in relation to payments being made late, but not by a significantly number of days, will result in constant circle of small GIC bills, late payment by funds followed by further GIC.

While there is potential for the ATO to use its discretion to waive the GIC in circumstances where the tax is paid late due to when a fund acted on a release authority, a preferable approach would be to design a system that reduces the opportunity for GIC to be incurred.

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A more appropriate period for payment would be 45 days. This would provide the member with 15 days in which to transfer the liability to the fund and 30 days for the fund to process the request.

Recommendation Two: ASFA recommends that the period for a person to pay the excess contribution tax be extended to 45 days.

2.3 Flexibility on Crystallisation the pre-July 1983 Component

As the pre-July 1983 component will be included in the exempt component of an individual's superannuation benefit, there will be an incentive for individuals to maximise their pre-July 1983 component by amalgamating superannuation accounts that have different eligible service period (ESP) starting dates.

However, amalgamation from different funds prior to the 30 June 2007 deadline will be difficult and in some instances impossible for certain individuals, as a result of either restrictive fund rules or prohibitive exit fees.

Denying the earlier ESP starting date and the resulting inequity between individuals in different circumstances could be avoided if funds were permitted to adjust a member's ESP starting date based upon written evidence of an earlier starting date from another complying superannuation fund. Members should be able to provide data to the fund no later than 30 June 2007, being the date by which they would otherwise have had to amalgamate their accounts in order to achieve the same result.

Recommendation Three: ASFA recommends that funds be permitted to adjust member's ESP starting dates based upon written evidence from other complying superannuation funds.

2.4 Changes to Fund Residency Test

The Bill replaces the existing definition of "resident superannuation fund" in section 6E of the ITAA 1936 Act with a definition for "Australian superannuation fund".

The main change is that there is no longer a specific temporary absence rule for trustees of the fund as an alternative condition to the requirement that the central management and control of the fund be in Australia. Under the replaced rule, trustees could be overseas for a period not exceeding 2 years and still satisfy the central management and control requirements. Further to this there also existed a temporary absence rule that allowed trustees to return to Australia for a period of not less than 28 consecutive days within 2 years so as to re-trigger the 2-year period.

This new definition will remove the temporary absence rule and is also silent on what period of time is acceptable for any overseas travel or work engagement. It is also unclear from the changes whether the "active member test" for determining whether a fund is a resident fund, is still relevant.

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The reasons behind the changes to the residency rules are not clear. The old rules provided a clear indication of what was acceptable i.e. 2 consecutive years absence with an ability to re-trigger the period by returning to Australia for at least 28 consecutive days within those 2 years.

The new rule is a more qualitative test that the central control and management of the fund remain *ordinarily* in Australia. It is noted in the Explanatory memorandum that "satisfying the current two-year temporary absence rule …… would normally satisfy the *ordinarily* requirement".

The parties affected by this change are trustees of self managed superannuation funds who are internationally mobile in regards their careers. The globalisation of the workforce means that these citizens need clarity in regards the residency status of their self managed superannuation funds and subsequently the entitlement to concessional tax treatment.

Recommendation Four: ASFA recommends that the ATO in conjunction with Treasury clarify the position of residency for superannuation funds with particular attention being paid to "the active member test" and a temporary absence discretion.

2.5 No TFN Contribution Income

The bill implements the non-quotation of TFN policy decision, which imposes a higher rate of tax on concessional contributions where there is no TFN quoted, by placing the tax liability on the fund in respect of those contributions received. Where a TFN is subsequently provided the fund is entitled to a tax offset in respect of the 'no-TFN' tax paid. The tax offset received is to be credited to the relevant member's account. When a claim for a tax offset arises due to a failure of an employer to pass on the TFN, the fund may also be entitled to interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1992.*

Administration difficulties will arise where a former member of a fund seeks to quote their TFN to obtain the refund of the tax.

ASFA recommends that the provision be amended to prevent a fund claiming a tax offset in respect of a non-member of a fund.

The above approach is consistent with the Government's policy on the use of TFNs in superannuation and the administration arrangements for members seeking a tax deduction for personal contributions. It is also a simple mechanism to understand and administer.

General protection from an individual being disadvantaged through adoption of this proposal would be provided through the following mechanisms:

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For members transferring to another fund: Under the regulations to the Superannuation Industry (Supervision) Act, prior to transferring a benefit to another fund, the trustee of a superannuation fund must be satisfied that the member is aware of the implications of transferring their benefit to another fund. This includes information about fees, charges and loss of benefits etc.

For members exiting the system: Where a member seeks direct payment of a benefit, the member's TFN is requested on the benefit claim form for taxation of benefit purposes.

For several years now, trustees, exercising the due care and diligence required of them, and acting in the best interests of members, have been seeking member TFNs through a number of ways. This will continue under the new laws.

Recommendation Five: ASFA recommends that the provisions in Subdivision 295J be amended to prevent a fund claiming a tax offset in respect of subsequent TFN quotation for a non-member of a fund.

If you have any questions or comments on this submission, please feel free to contact Dr Brad Pragnell, Director, Policy and Best Practice at the ASFA Secretariat on 02 9264 9300.

Yours sincerely,

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