



15 January 2007

The Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hallahan

Inquiry into the provisions of the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and five related bills

I refer to your letter dated 12 December 2006, inviting AXA Australia to make a submission to the above Inquiry.

AXA is a leading provider of superannuation and other financial services to retail clients in Australia. AXA welcomes the invitation to make a submission and hopes that the attached submission will assist the Committee in its deliberations.

If you have any queries in relation to the attached submission paper or would like to discuss any of the comments raised, please contact Greg Mullins, Compliance Manager, Superannuation and Insurance, on 03 9616 3083.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Milena Ickeringill', with a stylized flourish at the end.

Milena Ickeringill
Group General Counsel and Company Secretary



**Submission to the Senate Standing
Committee on Economics
Inquiry into the provisions of the Tax
Laws Amendment (Simplified
Superannuation)
Bill 2006 and five related bills**

Introduction

AXA is a leading provider of superannuation and other financial services to retail clients in Australia.

AXA is broadly supportive of the Government's initiatives to simplify and streamline superannuation, which was announced by the Treasurer in his 2006 Budget speech. This submission addresses several key areas of the Tax Laws Amendment (Simplified Superannuation) Bill (the Bill) affecting superannuation fund members and the operations of superannuation fund trustees, where AXA believes that amendments to the Bill are required to better achieve the Treasurer's proposals and to improve administrative efficiency.

1. Trustee Contributions

Schedule 1, Part 3, Division 295, subdivision 295-C: sections 295-160, 295-170

Currently, section 274(1)(a)(i)(B) of the Income Taxation Assessment Act 1936 (the ITAA 1936) provides for contributions to be made by a trustee on behalf of a member without being subject to contributions tax - see below.

274 Taxable contributions

- (1) Subject to this Division, the following amounts paid to an eligible entity (other than a PST) or an RSA in a year of income (the contribution year) are taxable contributions in relation to the contribution year:*
 - (a) if the eligible entity is a resident superannuation fund in relation to the year of income in which the contributions are made:*
 - (i) contributions made for the purpose of making provision for superannuation benefits for another person, other than:*
 - (A) contributions made by a person that is, when the contributions are made, a trustee of an exempt life assurance fund (within the meaning of Division 6C of Part III); or*
 - (B) contributions made by a person that is, when the contributions are made, a trustee of a complying superannuation fund, a complying ADF or a PST; or.....*

Although this provision, in AXA's experience, is not used frequently, there are circumstances in which a Trustee may make a contribution on behalf of a member. For example, if a Trustee has received an amount of compensation or had legal costs awarded these amounts may need to be paid into the fund as a trustee contribution so that they can be distributed as earnings. Similarly, a trustee contribution may arise where a refund of fee is provided by a service provider in respect of a previous period to correct a billing error.

Section 295-160 of the Bill replaces section 274 of the ITAA 1936 in relation to taxable contributions, and the sections which follow it exclude a number of different types of contributions from inclusion in the fund's assessable income. There is,

however, no exclusion relating to contributions made by a trustee, and there is no apparent rationale for this difference between the Bill and the ITAA 1936.

AXA submits that contributions made by a trustee of a complying superannuation fund, a complying ADF or a complying PST should continue to be excluded from a fund's assessable income, and that the Bill should be amended accordingly.

2. No-TFN Contributions Tax- deadline for provisions of TFNs

Schedule 1, Item 1, subsection 295-610

No-TFN contributions tax is required to be charged where a member's TFN has not been quoted to the trustee by the end of the financial year in which a contribution is received for that member.

The no-TFN contributions tax is to be remitted to the Australian Taxation Office (ATO) after the Commissioner has made an assessment of no-TFN contributions tax in respect of a particular member. In practice, this assessment will be made many months after the end of the financial year in which the contributions are received, and the member's TFN may have been quoted either by the member or the employer in this intervening period.

Under the Bill as currently drafted, where the TFN is received after the end of the financial year in which the contribution is made but before the no-TFN contributions tax is remitted, the tax must still be paid, and a refund can be sought in the next financial year. This disadvantages the member. It will also create administrative complexity for the fund, particularly where the member has exited the fund before the and cost refund is received.

In many cases, the member will provide their TFN at the point that they exit the fund. If this is after the end of the financial year in which the contribution was received, the trustee will still be required to withhold some funds to meet the no-TFN tax liability. The trustee will subsequently claim a refund in the following financial year because the TFN has now been quoted, and then forward this refund to the member, some twelve months after he/she has left the fund, assuming that he/she can be located. A further consequence may be small amounts remaining in the fund that cannot be paid because the member has become a lost member.

Trustees will also need to deal with members who will find it difficult to understand why they have incurred the no-TFN contributions tax after they have quoted their TFN, notwithstanding that the TFN was quoted after the end of the financial year. Many of these enquiries will inevitably be directed to the ATO when a member receives the release authority. In addition interest can only be covered on the amount paid in tax in limited circumstances where an employer has failed to pass on the TFN. Where this is not the case members will forfeit any earnings on the amount paid in tax.

AXA proposes that the Bill be amended to require funds to only remit no-TFN contributions tax only in circumstances where the TFN has not been provided before the due date for payment of the assessment. If an assessment has been made and the TFN has been provided to the trustee before the due date for payment, the trustee should be able to quote the member's TFN in satisfaction of the assessment rather than pay the no-TFN contributions tax.

This approach would avoid the administrative complexity, both for the trustee and the ATO, associated with the current proposal, as well as the disadvantage to the member. This proposal is still consistent with the purpose of the provision which is to promote the quotation of TFNs (rather than to raise revenue in the form of no-TFN contributions tax).

3. Existing pensions- opting in to new tax structure

Schedule 1, Part 3, Item 25, Clause 307-125.

Pensions that commenced before 1 July 2007 are subject to special transitional provisions that involve applying the existing deductible amount on a 'per payment' basis rather than an annual basis. Upon the occurrence of a specified trigger event, these pensions will be subject to the same proportioning arrangements as pensions that commence after 30 June 2007.

The Treasurer's proposals in relation to the new tax treatment of pensions indicated that the majority of existing pension members would be entitled to opt into the new tax treatment if they wished to do so. This option is not included in the Bill.

AXA submits that where a pension commenced prior to 1 July 2007 the pensioner and the trustee should have the discretion to opt for the pension to be treated under the same proportioning arrangements as for pensions that commence after 30 June 2007. Such a provision could make the administration of pensions simpler, as some funds will be in a position to administer all existing and new pensions under the same tax arrangements from 1 July 2007. This would avoid the need to maintain two taxation arrangements in the long term as pensions under the new rules are taken up and pre 1 July 2007 pensions end.

4. Existing pensioners over age 60

Schedule 1, Part 3, Item 25, Clause 307-125.

Subsection 307-125(3) lists the trigger events that apply to pensions existing before 1 July 2007. Subsection 307-125(3)(c) provides that one of these trigger events is where 'the holder of the superannuation interest turns 60'. This wording suggests that the trigger only applies to pensioners who commenced a pension before 1 July 2007 and turn 60 after that date. The consequence of this appears to be that existing pensioners who have already turned 60 will continue to have all the 'old' taxation components stored and maintained (unless they satisfy the criteria in subsection 307.125(3)(a) or subsection 307.125(3)(b)). As these pensioners are over the age of 60, they will no longer pay tax and this has no impact on their individual tax position. In the event of a trigger event, such as death, occurring, the resulting benefit will be subject to the new proportioning arrangements.

AXA submits that all existing pensioners who have turned 60 prior to 1 July 2007, should be subject to the proportioning arrangements from that date. This will have no consequence for the pensioner or their dependants but will simplify the administration of their pension as there will no longer be an obligation on the pension provider to maintain all of the existing tax components. The pension provider will, instead, be able to administer the pension under the new proportioning arrangements, providing administrative efficiencies and reducing compliance costs.

AXA's proposal would require amending the wording of Subsection 307-125(3)(c) to make it clear that it applies to all existing pensioners as at 1 July 2007 who have already turned 60. An appropriate alternative wording would be 'the holder of the superannuation interest turns or has already attained age 60'.

Please note that in discussing this provision, paragraph 2.130 of the Explanatory Memorandum refers to section 309-37(2) of the Bill. This reference in the Explanatory Memorandum should be to Schedule 1, Part 3, section 307-125.

5. Term Allocated Pensions - commencement between 1 July 2007 and 20 September 2007

Schedule 1, Part 3, Item 25, Clause 307-125.

Term Allocated Pensions (TAPs), are provided under *Superannuation Industry (Supervision) Regulation 1.06(9)*, in which they are referred to as 'market linked pensions'. TAPs became available from 20 September 2004. A TAP cannot be commuted during the term of the pension (except in limited circumstances) and the payments are fixed (noting that from 1 January 2006 annual pension payments can be varied from the amount calculated by up to 10%). Because of these characteristics, TAPs receive a concessional 50% asset test exemption for Social Security purposes.

While TAPs will continue to be available after 1 July 2007 (subject to changes to the *Superannuation Industry (Supervision) Regulations*), removal of the 50% asset test exemption for all complying income streams purchased on or after 20 September 2007 effectively means that it is unlikely that anyone will commence a TAP after this date. There is little incentive to continue offering TAPs, as the terms of this product are more restrictive than other allocated pensions and are relatively less attractive. Arrangements concerning the treatment of the tax-free component of existing pension payments to TAPs commenced after 1 July 2007.

The Bill will apply the new tax arrangements to TAPs that commence after 1 July 2007. These products will only be viable for a further 2 months, and providers of TAPs will be required to make the necessary changes to administration systems to accommodate the new taxation proportioning arrangements for a very small number of TAPS in doing so, they lose economies of scale. This will impose a disproportionately high development and compliance cost on these providers, which will impact on consumers.

AXA submits that all TAPs commenced before 20 September 2007 should be subject to the tax arrangements applying before 1 July 2007. In other words the existing methods of calculating the deductible amount should continue to apply.

6. Pre 83 Crystallisation- calculation to be performed by 30 June 2008

Schedule 1, Part 2, Item 23, section 288-105 *Taxation Administration Act 1953*

The Bill requires the crystallisation of an individual member's pre - July 1983 component as at 1 July 2007. The rationale for this is clear. However, the rationale for requiring the calculation for the crystallisation of all members pre-July 1983 component to be performed by 30 June 2008 is not apparent.

The pre July 1983 component is only relevant at the time that a member is paid a benefit, or seeks an estimate of the taxation components of their benefit in contemplation of payment of a benefit. This information is not regularly reported to the member or the Australian Taxation Office except upon payment, and is not used for any other purpose.

There are some older (legacy) products in respect of which all the information required to calculate the pre July 1983 component is not currently held by the superannuation fund trustee, or where information may be held but requires verification by the member. In these circumstances, current processes require that this information be obtained from the member at the point that he/she seeks payment of his/her benefit or requests an estimate of the taxation components of his/her benefit. The requirement to calculate the pre-July 1983 component for members of these funds would necessitate a very significant communication exercise with these members. Should the member fail to provide the necessary information by 30 June 2008, the trustee will be unable to calculate the pre- July 1983 component and will be liable to an administrative penalty.

While in many cases trustees will crystallise the pre-July 1983 component before 30 June 2008, there is no reason why trustees should be compelled to do so. Trustees should be allowed to perform the calculation to crystallise the 30 June 2007 value of the pre-July 1983 component at the point when this information is required- i.e. to facilitate payment of a benefit or to provide an estimate of the taxation components.

AXA submits that section 288-105 of the Taxation Administration Act 1953 should be removed from the Bill. This section is not required to achieve the Bill's objective in relation to the crystallisation of the pre-July 1983 component. The section unnecessarily increases the workload of superannuation trustees, it inconveniences members; and it unfairly exposes trustees to administrative penalties.