**The Senate**

**The Standing Committee on Economics**

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

**Submission by the National Institute of Accountants**

The National Institute of Accountants (NIA) has reviewed the proposed legislation in relation to the Superannuation Simplification measures previously announced in the May 2006 Budget. As previously noted by the NIA, we support the general principles set out in the legislation and believe that the proposal is the most welcome development in Superannuation policy since its initial inception.

The NIA will raise one general issue of concern, relating to the timing of the release of the proposed legislation. While we have been aware of the general principles of the proposals many of issues that may arise as a result of these changes can not be properly dealt with until the proposed legislation is released. Time is required to go through the proposed changes to determine what the outcome may be for certain taxpayers in different circumstances. While the proposed legislation has now been released it was released at the most inappropriate time, a release date that could well result in issues not being detected and dealt with in an appropriate time frame.

The legislation was released in the last sitting week of Parliament, only weeks prior to the Christmas and New Year period where many people, including accountants take time off to be with their families. While some accountants do take work home over that period, many wish to relax at home. The result of this is that many accountants who might otherwise be able to determine any practical problems with the proposed legislation will not have sufficient time to read the proposed legislation and make determination about any potential practical consequence.

Our concern is that issues that need to be raised may not be prior to the date for any submissions to be completed. We rely on our membership with their years of practical experience to report back to us on these types of issues. The small numbers of responses we have had to date are more likely a result of this timing problem rather than there being no practical issues. While nothing can be done to change this situation, as has been noted in previous years with other legislative changes, introducing new laws for discussion weeks before Christmas is not conducive to proper analysis and discussion, and this can lead to less than optimal legislative outcomes. It is much easier to fix a problem before it becomes law than after.

## Contribution issues

*Payment to former employees*

**S 290-85** Concern has been raised in relation to former employees. The proposed rules allow for only one off payment in relation to former employees, however, it has been remarked that there are likely to be circumstances where there may need to be more than one payment, such as where an employee leaves and they receive their normal contribution for that pay period, and then a final payment may be made at a later date to finalise their contributions. The proposed rules do not appear to allow for this situation.

A number of proposals have been suggested to rectify this without opening the system up to abuse, they include:

- Allowing up to three payments;
- Having a period of three months for all payments to be finalised; or
- A combination of both the above.

The NIA supports changes being made to the legislation to allow for contributions to be made up to two or three months after the termination of employment, as long as all the other requirements are met.

*Excess Contribution Tax* (s 292 –G)

A concern has been raised by the superannuation fund sector in relation to the application of the excess contribution tax and the General Interest Charge (GIC). The proposed law says that GIC will be applied if after 21 days of the Commissioner's notice, the excess contribution tax has not been paid and will be calculated until the amount is paid and there are no other amounts owing. The problem is that the superannuation funds have 30 days to action any request. What may occur is that the person has instructed their fund to take appropriate action within the 21 days to remedy the excess contribution problem but the fund is not able to finalise what it is required to do within the remainder of the 21 days, even though it is operating correctly within the 30 days it has to take action. Neither party is at fault in this circumstance but a breach will occur and GIC imposed.

The NIA would suggest that there be a general policy adopted by the ATO that no GIC will be charged if the taxpayer has taken appropriate action within the 21 days to inform the superannuation fund of the excess contribution tax issue.

## S 295–I TFN issues

The NIA supports the attempt by the Government to ensure that TFN's are supplied in relation to superannuation fund contributions. However, there are some other measures that could be adopted that may ease the problem as well. One issue that has been brought to the NIA's attention is the fact that many employers believe that they do not have the legal capacity in many circumstances to provide TFN information. The reason for this is that the law requires that the TFN form be approved by the regulator, for all funds, other than SMSF's. The Australian Prudential Regulatory Authority (APRA) has failed to approve the form. If APRA is not encouraged to take action to approve this form then it is likely that the measures outlined in Division 295 are may be ineffective or at least less effective than they should be. This change does not require legislative amendment so it can be dealt with as a matter of priority.

One suggestion has been that the employment declaration form be amended so that a person can tick a box on the employment declaration that their TFN is to be provided to the employers default superannuation fund or any other complying fund nominated by the taxpayer to receive their superannuation guarantee contributions.

## Death Benefits

The NIA is concerned at the application of different rules in relation to death benefits, particularly the different rules that apply between dependent and non-dependent recipients. It is the view of the NIA that there should be no difference in the application of the rules between whether the recipient is a dependent or non-dependent. When a person dies and their estate directs where the assets of the deceased are to be attributed, there is no different taxation effect of such disbursements made on the basis of whether the person was a dependent or not, and the same should be applied to superannuation benefits.

The NIA believes that as a general principal, the taxing of the death benefit should be based on what the taxing effect would have been on the individual who has died if they had received the superannuation benefit at that time. The only exception the NIA would have to this rule is where the person receiving the amount is over 60 but the deceased is under 60, in that circumstance the person should receive the amount tax free where they are the spouse of the deceased and taxed as normal otherwise.

Therefore, if the deceased is over 60 the amount should not be taxed at all, regardless of whether the person is a dependent or not. If the deceased was between 55 and 60 then the benefit transferred to another person should be taxed the same way as if the recipient was the deceased. The same would apply if the person was under the preservation age when they died. The only situation where it should be different is for a spouse of the deceased. The reason for this is that it should have the advantage of their deceased spouses superannuation benefits but without being hit with a tax that arises solely because their spouse has died.

The reason for these proposals is not only to ensure greater consistency but because otherwise the Government may receive a taxation benefit it would not otherwise receive. If the deceased is over 60 they will not be taxed on their benefits under the new rules. If the government were then to tax differently the new recipient, they are getting a taxation benefit they would not otherwise receive and the NIA does not believe the Government should receive a tax windfall merely because a person dies.

## Consequence for taxpayers 50 and over

The NIA understands the need for the Government to place restrictions on the contributions that receive the generous concessional treatment, however, the NIA is concerned that those who are targeted, despite the transitional arrangements, are those most in need of generous superannuation arrangements. That being taxpayers in the 50 and over bracket. For most of these people they will have been contributing to superannuation only since its inception not for the entire working life. This means that they will have less SG contribution when they retire than those who are 40 and below will have when they retire, all other things being equal.

With the added problem now that they will have restrictions on the amount they can put into superannuation at a time when they can probably afford to do so is placing an unfair burden on those probably in most need. The NIA would therefore like to see the transitional period increased for these taxpayers so that they can make the most out of their remaining years of employment. The NIA would like to see the period of the transitional arrangements to last until 2014/15 for those who are 50 or over.