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

By email: economics.sen@aph.gov.au

Dear Mr Hallahan

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

CPA Australia welcomes the opportunity to make a submission to the committee's inquiry into the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and related bills.

CPA Australia is the pre-eminent body representing the diverse interests of more than 108,000 finance, accounting and business advisory professionals working in the public sector, public practice, industry and commerce, academe and the not-for-profit sector.

We are a long time advocate of superannuation as a retirement savings vehicle and support any measures that will genuinely simplify the superannuation system. We have been closely involved during the consultation process for the superannuation simplification package and continue to be involved through Treasury's reference group for the drafting of the legislation.

Overall, CPA Australia welcomes and supports the changes outlined in the final package announced on 5 September 2006 and introduced into Parliament in the abovementioned bill on 6 December 2006 . We believe these changes will significantly simplify Australia's superannuation system and help improve the retirement savings of many Australians. In particular, we see significant benefits arising from:

- The removal of tax on benefits paid after age 60 and the abolition of the reasonable benefit limits
- The simplification of the payment rules and remaining benefit taxes
- The introduction of full tax deductibility of superannuation contributions for the self employed, along with access to the Government co-contribution.

However, we believe there are certain areas within the package where further improvements can and should be made to reduce complexity and improve equity, including:

- Taxation of death benefits
- Commutation of existing complying pensions
- Concessional contribution limits
- Overseas benefits from contribution limits
- The treatment of benefits from untaxed schemes.

We also believe there is scope for other measures to be introduced, particularly extending the deductibility of superannuation contributions, which would provide a logical extension of the superannuation simplification package.

These areas of improvement are discussed in further detail below.

Taxation of death benefits

It is proposed that the payment of death benefits to dependants after 30 June 2007 will be tax free, while the taxable component of death benefits paid to non-dependants will be taxed at 15%. CPA Australia believes this will provide arbitrage opportunities and create inequities within the system. For example, an individual knowing they are going to die will be able to take their superannuation benefit as a lump sum and pass it on to their adult children tax-free. On the other hand, where death is sudden and unforeseen, the benefit may still be paid to the adult children but it would be taxed at 15%. Additionally, recontribution strategies are already being promoted in the market to withdraw the taxable component over time and re-contribute it as an undeducted contribution, effectively reducing the taxable component to nil.

Further, there are inconsistencies between the definitions of 'dependant' in the Superannuation Industry (Supervision) Act 1993 and the Income Tax Assessment Act 1936. Section 10(1) of the SIS Act includes in the definition of 'dependant' any child of the person, whereas section 27A(1) of the ITAA 1936 only includes a child up to the age of 18 in the definition of 'dependant'. The result is a superannuation benefit can be paid to an adult child as a dependant under the SIS act but then it is taxed as if it was to a non-dependant under the Tax Act.

CPA Australia believes another layer of complexity would be removed and it would be more equitable if all death benefits were paid tax free after 30 June 2007 and the definition of 'dependant' in the ITAA 1936 was aligned with that in the SIS Act.

Commutation of existing complying pensions

The proposed simplification of the pension rules from 1 July 2007 will result in complying income streams – lifetime, life expectancy and market linked – essentially being redundant (except for current recipients wishing to preserve their 100% or 50% asset test exemption). As one of the objectives of the proposed changes is to provide retirees with the flexibility to decide when and how they access their superannuation, CPA Australia believes the pension and annuity standards should be amended from 20 September 2007 to remove the commutation restrictions for existing complying income streams.

The commutation of commercially provided guaranteed income streams may have the potential to have a detrimental impact on members. However, there would be no such impact on recipients of market linked income streams (MLIS), and SMSF pensioners should be able to determine the impact themselves. Further, as MLIS are relatively new and they have been

purchased in good faith to satisfy particular rules, individuals should be allowed to get out of these products, if they choose, now the rules have changed.

Concessional contribution limits

While the new limits on deductible contributions will provide greater flexibility for younger contributors, and CPA Australia supports them, older contributors may be disadvantaged in the short term. Many people have significant financial commitments, such as family, education and mortgages, well into their late 40s and early 50s and as such have planned on making large superannuation contributions closer to retirement to catch up, as permitted by the current rules. This situation has been recognised and is reflected in the five year transitional period proposed. However, CPA Australia believes these arrangements are still too restrictive and unfairly penalise people who may have retirement savings plans in place based on the current rules. For someone aged 50 their options have been reduced from $105,113 (plus indexing) a year for 15 years to only $100,000 a year for five years. Their potential retirement savings have dropped considerably. Furthermore, the transitional limit of $100,000 a year will not be indexed, whereas the normal limit of $50,000 will be, resulting in the erosion of the value of the transitional limit.

CPA Australia believes the transitional limit for individuals aged 50 and over should be increased to $100,000 for 10 years and should also be indexed in line with the other contribution limits. This would permit more people, especially those in the over 50 group, who could have contributed the higher amount and had planned to, to fulfil their retirement savings plans.

Overseas benefits excluded from contribution limits

CPA Australia believes benefits transferred from overseas superannuation funds should be exempt from the contribution limits. Given these benefits are treated as if they have been accumulated in the Australian superannuation system, i.e. they are taxed accordingly, the individual should have the opportunity to add them to their Australian superannuation benefits. Applying the limits may actually make it difficult, if not impossible, for individuals to transfer their retirement savings into Australia as there will be situations where overseas funds will not permit partial transfers of benefits. As such, the transfer amount should be exempted from the limit on undeducted contributions and the amount elected to be treated as taxable contributions, i.e. the earnings should be exempted from the concessional contribution limit.

CPA Australia understands from previous discussions with Treasury officials that there may be concerns that such an exemption may provide the opportunity for individuals to funnel contributions through overseas superannuation funds and hence bypass the contribution limits. However, the risk of this is low, due to the difficulties involved with residency, termination of employment, taxation and payment rules, compared to the importance of allowing, and encouraging, expatriates to consolidate their retirement savings in Australia.

Untaxed schemes

As untaxed schemes do not pay tax on contributions and earnings as they are received, we support the principle that benefits from these schemes should be taxed at a higher rate than benefits from taxed funds to compensate. Currently the differential is generally 15% (10% for under 55s), which we believe is fair and reasonable to compensate for the taxes foregone on contributions and earnings.

However, we believe the proposal to tax at the top marginal tax rate that part of the post-June 1983 untaxed element above the threshold of $1 million is no longer fair or equitable. There remains, in effect, a de facto RBL for members of unfunded schemes. Something their counterparts in taxed funds no longer have to contend with.

Similarly, the treatment of pensions from an untaxed source seems inconsistent compared to those from a taxed source. For example, pension income paid from an untaxed scheme will be assessable income (albeit with a modest rebate) while pension income from a taxed fund will not be assessed. The result may well be the recipient of an untaxed pension being pushed into a higher tax bracket and being further disadvantaged compared to their taxed fund equivalent. In addition to the risk of being pushed into a higher tax bracket, benefits paid from untaxed schemes will also be subject to the medicare levy, while benefits paid from taxed funds will not.

We believe that if significant benefits, such as removal of the RBLs and abolition of benefits tax over age 60, are being provided to members of taxed funds, equivalent benefits should also be provided to members of unfunded schemes. Parity should be maintained so that the only difference between taxed funds and untaxed schemes is a tax on benefit to compensate for the taxes foregone on contributions and earnings. The current differential between the two is generally 15%, and we believe this should be maintained going forward.

Extend deductibility of superannuation contributions

In recent times, employment arrangements have become more flexible with many people employed under casual or contracting arrangements. Those who consider themselves largely self-employed have found they may have lost their eligibility to claim a deduction for superannuation contributions after taking on relatively small consulting or contracting roles. There is often a 'double whammy' effect in that these contracting roles will only pay superannuation guarantee (SG) contributions and there is no provision for the contractor to make voluntary or salary sacrifice contributions. The result is individuals may end up with minimal superannuation coverage since they do not have any more than SG coverage from their employment and are not able to claim a deduction for their own contributions.

These individuals are at a distinct disadvantage compared to those who are full time employees or full time self-employed. As such, CPA Australia believes the '10% rule' be abolished to provide greater incentive and flexibility to people who have to make their own superannuation provisions.

CPA Australia recognises such a move would also allow employees to claim a deduction for their personal superannuation contributions. However, with full deductibility being given to personal contributions, there is now essentially no difference between the treatment of employer, salary sacrifice and personal deductible (i.e. self employed) contributions and therefore no rationale as to why such deductibility is not permitted. The proposed $50,000 annual limit on concessional contributions would control the concessions available and there would be no benefit in exceeding the limit as excessive contributions would be taxed at the top marginal tax rate.

Importantly, allowing deductibility for personal contributions would benefit those employees whose employers limit or do not provide for salary sacrifice contributions and are at a distinct disadvantage compared to employees who do have access to salary sacrifice

Abolishing the '10% rule' would create a level playing field whereby all superannuants would have the same access to concessional contributions and the same flexibility to decide whether their voluntary contributions should be made from before or after tax income. The limits on concessional and undeducted contributions would ensure everyone receives the same concessions. Such a move would be another important step in ensuring equity and simplifying the superannuation system.

If you have any questions regarding the above, please do not hesitate to contact me.

Yours sincerely

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