

Chapter 5

Schedule 4 – Capital gains tax marriage breakdown roll-over for small superannuation funds

5.1 Schedule 4 of the bill implements a 2007 Budget measure announced by the Minister for Revenue and Assistant Treasurer on 8 May 2007. When announcing the measure, the Minister explained that:

Currently the CGT roll-over for assets of small superannuation funds on marriage breakdown applies only to the spouse who benefits from a payment split made under the *Family Law Act 1975* and only to the assets subject to the payment split. These assets can only be rolled over to another small superannuation fund.¹

5.2 Schedule 4 proposes to amend the *Income Tax Assessment Act 1997* to extend the capital gains tax (CGT) marriage breakdown roll-over to *in specie*² transfers of personal superannuation interests from a small superannuation fund³ to another complying superannuation fund under specific conditions. According to the Explanatory Memorandum, these amendments would ensure that 'CGT need not be an impediment to separating spouses achieving a 'clean break' from each other in terms of their superannuation arrangements'.⁴

5.3 This measure has apparently been 'generally welcomed'. However, one commentator was disappointed that the proposed changes were not made effective from the time of the announcement in May, rather than to CGT events that happen on or after 1 July 2007.⁵

5.4 The committee received few comments on the Schedule during the inquiry. The Certified Practising Accountants of Australia noted that:

...a CGT roll-over on marriage breakdown to ensure that CGT is not an impediment to separating spouses achieving a 'clean break' from each other

-
- 1 The Hon Peter Dutton MP, Minister for Revenue and the Assistant Treasurer, 'Extending Small Superannuation Fund Capital Gains Tax (CGT) Roll-over on Marriage Breakdown', Press Release No. 046, 8 May 2007.
 - 2 Where fund members contribute non-cash assets (such as shares) into a super fund, these are known as in-specie contributions: see further Australian Taxation Office *SMSF Newsletter*, Edition 1, at: <http://www.ato.gov.au/super/content.asp?doc=/Content/85847.htm&page=2&H2> (accessed 21 August 2007).
 - 3 A 'small superannuation fund' is defined as a complying superannuation fund with four or fewer members: see *Explanatory Memorandum*, p. 132.
 - 4 EM, p. 130.
 - 5 See further Tim Blue, 'Split the difference in assets', *The Weekend Australian*, 12 May 2007, p. 38.

in terms of their superannuation arrangements, will also be of benefit to affected taxpayers and also the community generally.⁶

5.5 The committee considers that the schedule appears to be uncontroversial and should be supported without amendment.

6 CPA Australia, *Submission 12*, p. 2.