



2 October 2008

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 Sir/Madam

- A. Inquiry into Temporary Residents' Superannuation Legislation
- B. Potential detriment to employers and temporary residents

We act as advisers to employers and individuals in respect of their superannuation, insurances and investments.

The proposed provisions are likely to be detrimental to our clients. Specifically:

1. The new proposal to increase the DASP Withholding Tax from 30% to 35% was **not** part of Treasury consultation process.
2. The proposals are inequitable in that they apply an effective tax rate of 50% (approximately, 15% Contributions Tax plus 35% DASP Withholding Tax) on Temporary Resident Super Contributions, compared with:
 - a. 15% on Resident Super Contributions
 - b. the Top Marginal Tax Rate of 45% on income
 - c. the Marginal Tax Rate applying to most of the Temporary Residents for our clients of 30%.
3. No earnings or indexation is to be applied while funds are held by ATO for what could be a 20 to 30 year period until retirement, diminishing in real terms, the retirement benefits of such persons.
4. The measures make it inappropriate for nearly all Temporary Residents to invest in any growth asset exposure, which includes most super fund default options, due to short-term volatility and there being no control of exit timing (ie when terminated funds are transferred to the ATO). This will result in more 'red tape' and complexity for funds to ensure that the default investment option for Temporary Resident members is of a 'Cash' type rather than say a 'Balanced' type. The

estimates of cost to business may therefore be grossly understated.

5. The retrospective nature of the measures will disadvantage existing and past Temporary Residents as they are mostly invested in funds with significant exposure to growth assets, which are now at low values due to the global financial crisis. Yet the measures will force Temporary Residents to crystallise any losses by terminating their fund membership and transferring their (reduced) balances to the ATO. To avoid retrospective disadvantages, the measure should **not** apply to Temporary Residents entering Australia prior to the Date of Effect of the legislation.
6. Some Temporary Resident members have even entered into Salary Sacrifice arrangements, so the measures will penalise their own contributions, not just the Superannuation Guarantee contributions. To avoid retrospective disadvantages to contributions in excess of SG, the measure should **not** apply to Temporary Residents entering Australia prior to the Date of Effect of the legislation.
7. The Date of Effect is unlikely to provide reasonable time for employers and existing and past Temporary Resident members to change their arrangements to ensure that the impact of the measures are minimised. For example, for employers to arrange separate fund categories for Temporary Resident and Resident members; and for Temporary Resident members to exit investments with growth asset exposure at a time of their choosing when investment markets have stabilised. The measures should only apply from say 1 July 2009.
8. One of our employer clients is an international company (listed on the New York Stock Exchange) with Australian subsidiaries, that regularly sends its employees around the world on postings, usually of 3 years at a time. The employer expects to have about 1,000 employees in Australia in the next couple of years. At any one time we could have 100 or more active temporary resident employees in the Corporate Super plan. Our client has a very caring approach to its employees, and has for over 10 years looked after the super of its employees returning overseas to work with the employer, by holding their super benefits in a separate category of the Corporate Super plan (and paying any fees thereon). We believe that such accounts do not fall within the intention of the Bill as they are not 'lost accounts' nor 'unclaimed money'. Unfortunately they are being caught-up as an unintended consequence of the wording of the Bill, and should be excluded by amendment to the Bill.
9. Most or all of the disadvantages to our clients could be avoided by making the transfer of funds to the ATO optional if requested by an employer sponsor of the fund. This could be achieved by amending the Bill to redefine

'unclaimed superannuation'.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized initial 'C' followed by a long, horizontal, slightly wavy line.

Charlie Sorel
Authorised Representative of Hillross Financial Services Limited

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Charlie is the **Hillross Financial Planner of the Year 2005**; and a Member of the Personal Investor Master Class of 1999.