The Senate

Standing Committee on Economics

Tax Laws Amendment (2009 Measures No. 1) Bill 2009 [Provisions]

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Senate Standing Committee on Economics

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Acronyms and abbreviations

ACTU – Australian Council of Trade Unions

EM – explanatory memorandum

GDP – gross domestic product

IFF – Industry Funds Forum Inc.

ITAA 1936 – *Income Tax Assessment Act 1936*

ITAA 1997 – *Income Tax Assessment Act 1997*

PAYG – pay-as-you-go

RESC – reportable employer superannuation contributions

TAA 1953 – *Taxation Administration Act 1953*

Chapter 1

Introduction

1.1 The Tax Laws Amendment (2009 Measures No. 1) Bill will amend various taxation legislation to implement a range of changes to Australia's tax laws. These include:

- a one-off 20 per cent reduction to the pay-as-you-go tax instalment for certain business taxpayers for the December quarter 2008, and a related regulation to enable such variations more easily in future;
- consequential amendments to various Acts arising from changes to the unclaimed money regime in 2008 ; and
- reforms to income tests used for determining eligibility for a range of government financial assistance programmes.

1.2 There is a different rationale behind each of the measures proposed by the bill.[1] First, the 20 per cent tax instalment reduction was proposed as an 'action to help Australian small businesses to weather the global financial crisis';[2] the introduction of regulations is intended to enable such variations to be more easily made in future.

1.3 Second, the amendments to the unclaimed money regime follow changes to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in 2008, to provide that the superannuation money of a former temporary resident is included in the unclaimed superannuation regime and is payable to the Commissioner (but can still be claimed at any time by the departee).[3]

1.4 Third, the reforms to income tests expand the income tests used in determining eligibility for a range of government financial assistance programmes. These measures will remove inconsistencies in the treatment of non-wage remuneration and take better account of certain losses. They will also align the

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1 See Chapter 2 for a more detailed discussion of the measures in the bill.

2 The Hon. Wayne Swan MP, 'Reduction of the quarterly pay-as-you-go instalment due in February 2009 for small businesses', Media Release 140, 12 December 2008, p 1, at http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/140.htm&pageID=&min=wms&Year=2008&DocType=0, accessed 16 February 2009.

3 For details on the 2008 changes see the Senate Standing Committee on Economics report, *Temporary Residents' Superannuation Legislation Amendment Bill 2008 [Provisions]; Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 [Provisions]*, November 2008.

definition of income for dependency tax offsets with that which applies for family assistance payments. These changes were announced as part of the 2008-09 budget.[4]

Financial impacts of the bill

1.5 The financial impact of the 20 per cent tax instalment reduction is estimated to be neutral over the forward estimates.[5]

1.6 The EM identifies no financial impacts arising from the amendments to the unclaimed money regime.

1.7 The income test reforms are estimated to produce an annual saving of around $160 million to $170 million from 2009-10 to 2011-12, with implementation and administrative costs of around $5.5 million for the Australian Tax Office over the same periods. Administrative costs beyond the forward estimates are expected to be around $2.8 million annually.[6]

Conduct of the inquiry

1.8 The Tax Laws Amendment (2009 Measures No. 1) Bill 2009 was introduced to the House of Representatives on 12 February 2009. On the same day, on the recommendation of the Senate Selection of Bills Committee (Report No. 2 of 2009), the bill was referred to the Senate Economics Committee for inquiry and report by 10 March 2009.

1.9 A number of stakeholders were directly invited to make submissions to the inquiry, and a general invitation was placed on the committee's website. The committee received four submissions (see Appendix 1). They can be found at http://www.aph.gov.au/senate/committee/economics_ctte/index.htm. The committee thanks submitters for their contributions.

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4 See The Hon. Wayne Swan MP, 'Fairer means-testing of government support programs', *Media Release*, no 046, 13 May 2008, p 1, at http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/046.htm&pageID=003&min=wms&Year=&DocType=0, accessed 2 March 2009; and 'Better targeting of the dependency tax offset', Media Release 047, 13 May 2008, p. 1, at http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/047.htm&pageID=003&min=wms&Year=&DocType=0, accessed 2 March 2009.

5 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 3, http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4047_ems_d143e0c8-5833-4aa3-86c5-02ffe9eecba6/upload_pdf/325973.pdf;fileType=application%2Fpdf, accessed 16 February 2008.

6 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p. 84.

Chapter 2

Objects of the bill

PAYG instalment reduction for small business/introduction of regulations (Schedule 1)

2.1 Schedule 1 to the bill amends section 45-400 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953), which sets out how the Commissioner of Taxation works out the pay-as-you-go (PAYG) tax instalments on the basis of GDP-adjusted notional tax for quarterly payers.

2.2 The amendments provide for a 20 per cent reduction of the amount of the PAYG tax instalment worked out under section 45-400 for the quarter that includes 31 December 2008.

2.3 In general terms, the reduction will apply to small business taxpayers who are quarterly taxpayers.[1] The EM states:

> Small business taxpayers who will be eligible for the reduction are *small business entities*…a partner of a partnership that is a small business entity, or a beneficiary of a trust that is a small business entity, for either the 2007-08 or 2008-09 income years.[2]

2.4 'Small business entity' is defined in section 328-110 of the *Income Tax Assessment Act 1997* (ITAA 1997). Broadly, an entity is a small business entity if it is carrying on a business for an income year and its aggregated turnover is less than $2 million for the previous income year or is likely to be less than $2 million for the current income year.

Reason for the amendments

2.5 Under the PAYG instalments system, taxpayers earning business or investment income pay instalments during the year towards their final tax liability for that income year. Certain taxpayers may pay their PAYG instalments on the basis of GDP-adjusted notional tax, which in broad terms is worked out by 'uplifting' a taxpayer's income in the previous year by that year's rate of nominal GDP growth (the GDP uplift factor).

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1 This is expected to be those small business entities with aggregated turnover of $2 million per annum or less: the Hon. Wayne Swan MP, 'Reduction of the quarterly pay-as-you-go instalment due in February 2009 for small businesses', Media Release 140, 12 December 2008, p 1, http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/140.htm&pageID=&min=wms&Year=2008&DocType=0, accessed 16 February 2009. Note that from the 2009-10 income year 'small business entities' will automatically be eligible to use the GDP-adjustment method.

2 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 10.

2.6 The explanatory memorandum (EM) to the bill explains that the GDP uplift factor can be unrepresentative of expected profit growth in income years where economic and business conditions change quickly and the expected income of taxpayers changes accordingly. This can mean taxpayers are required to pay PAYG instalments that are too high compared with their actual income, with the overpaid tax being refunded at the conclusion of the income year when the taxpayer's final tax liability is assessed.

2.7 Specifically, for the 2008-09 income year, due to the global financial crisis, the forecast profit growth for small businesses is significantly lower than the GDP uplift factor of 8 per cent. In announcing the measure, the Treasurer, the Hon. Wayne Swan, provided the following justification for the reduction:

> This 20 per cent cut in the…instalment will more accurately reflect small businesses' average actual profit growth in the current economic environment. It will provide immediate and much-needed cash flow relief to small businesses and encourage small business confidence.[3]

2.8 The EM states that the 20 per cent reduction for the quarter broadly represents the annual reduction in instalments necessary to reflect the expected slowing in small business profit growth for the 2008-09 income year.

Introduction of regulation-making power

2.9 Schedule 1 also introduces a regulation-making power to allow the amount of the PAYG instalment worked out under section 45-400 of the TAA 1953 to be reduced in the future, in circumstances specified by regulations.

Reason for the amendment

2.10 The EM notes that while taxpayers are able to vary their instalment amounts, as calculated and notified by the Commissioner, many are reluctant to do so because underpayments can trigger the general interest charge. It is therefore desirable to build more flexibility into the law to allow the instalment amounts calculated on the basis of GDP-adjusted notional tax to be reduced 'to more accurately reflect prevailing economic conditions and actual income of taxpayers for a particular income year'.[4]

Temporary residents’ superannuation and unclaimed money (Schedule 2)

2.11 In 2008 the *Superannuation (Unclaimed Money and Lost Members) Act 1999* was amended to provide that the superannuation money of a former temporary resident is included in the unclaimed superannuation regime and is payable to the

3 The Hon. Wayne Swan MP, 'Reduction of the quarterly pay-as-you-go instalment due in February 2009 for small businesses', *Media Release*, no 140, 12 December 2008, p 1.

4 The Hon. Wayne Swan MP, 'Reduction of the quarterly pay-as-you-go instalment due in February 2009 for small businesses', *Media Release*, no 140, 12 December 2008, p 1.

Commissioner (but can still be claimed at any time by the departee).[5] The second reading speech to the bill explains:

> This was done to help reduce the number of lost accounts and unclaimed money in the superannuation system which arises when temporary residents depart Australia without taking their superannuation with them.[6]

2.12 Schedule 2 amends a number of Acts as a consequence of those changes to the unclaimed superannuation scheme. The affected Acts include legislation governing:

- financial transaction reporting;
- small superannuation accounts payments;
- superannuation guarantee shortfall components; and
- government superannuation co-contribution legislation.[7]

2.13 Schedule 2 will also make changes to the broader unclaimed money regime to make the existing provisions more compatible with the new provisions for the payment of temporary residents' unclaimed superannuation to the Australian government. The changes include:

- allowing the Commissioner to set by legislative instrument the due dates for statements and payments of unclaimed monies;
- requiring superannuation providers to provide statements containing certain information pertaining to unclaimed money;
- requiring superannuation providers to correct material errors or omissions from unclaimed money statements;
- defining the circumstances requiring payments of unclaimed superannuation by the Commissioner;
- making the penalties and general interest charges for unclaimed money consistent with broader taxation administration;
- clarifying the law in relation to the taxation components of unclaimed money payments made by the Commissioner;
- other administrative issues, such as refunds and returns and recovery of overpayments; and

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5 For details on the 2008 changes see the Senate Standing Committee on Economics report, *Temporary Residents' Superannuation Legislation Amendment Bill 2008 [Provisions]; Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 [Provisions]*, November 2008.

6 The Hon. Chris Bowen, Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer, *House of Representatives Hansard*, 12 February 2009, p 7.

7 Specifically, the affected Acts are the *Financial Transaction Reports Act 1988, Income Tax Assessment Act 1997, Small Superannuation Accounts Act 1995, Superannuation (Government Co-contribution for Low Income Earners) Act 2003* and *Superannuation Guarantee (Administration) Act 1992.*

- other minor refinements and improvements to the operation of the existing law.[8]

2.14 These amendments are also intended to improve the general administration of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. The EM notes that most of the changes are consistent with (and in many cases identical to) the requirements for the new temporary residents unclaimed superannuation regime.[9]

Why are the amendments necessary?

2.15 In the second reading speech to the bill, the Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer, the Hon. Chris Bowen, stated:

> Without these changes superannuation providers would need to maintain two very different unclaimed money regimes, one for general unclaimed superannuation money, and another for the temporary residents' unclaimed superannuation regime.[10]

Reforms to income tests (Schedule 3)

2.16 Schedule 3 introduces reforms announced in the 2008-09 budget. The reforms expand the income tests used in determining eligibility for a range of government financial assistance programmes to include certain salary sacrificed contributions to superannuation, total net investment losses and adjusted fringe benefits.

2.17 The amendments also revise the parental income test, and family actual means test, which are used to determine a dependant's eligibility for Youth Allowance, to ensure that the particular superannuation contributions and losses that are assessed as income for the purposes of those tests align with the 'reportable superannuation contributions' and 'total net investment loss' definitions (see below).

2.18 Financial assistance programmes affected by the reforms will include student financial assistance programmes, family assistance payments, income support payments for individuals below age pension age and various means-tested tax benefits.[11] Affected Acts and programmes are summarised in the table below.

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8 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 16.

9 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 16.

10 The Hon. Chris Bowen, Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer, *House of Representatives Hansard*, 12 February 2009, p 7.

11 Note that certain drought assistance payments are specifically excluded; the bill will make amendments to the *Farm Household Support Act 1992* to ensure that certain superannuation contributions are not counted as income.

Table 1: Acts and programmes affected by expanded income tests

Act	***Programme(s)***
A New Tax System (Family Assistance) Act 1999	Child Care Benefit Family; Tax Benefit Baby Bonus
A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999	Medicare levy surcharge
Medicare Levy Act 1986	Medicare levy surcharge
Child Support (Assessment) Act 1989	Child support
Higher Education Support Act 2003	Higher Education Loan Program
Income Tax Assessment Act 1936	Senior Australians tax offset; Tax offset for trustees (section 160AAAB)
Income Tax Assessment Act 1997	Deduction for personal superannuation contributions; Mature age worker tax offset; Spouse superannuation contributions tax offset; Tax offset for Medicare levy surcharge (lump sum payments in arrears)
Social Security Act 1991	Commonwealth Seniors Health Card Student Financial Supplement Scheme Youth Allowance
Student Assistance Act 1973	Student Financial Supplement Scheme
Superannuation (Government Co-contribution for Low Income Earners) Act 2003	Government superannuation co-contribution scheme
Veterans' Entitlement Act 1986	Commonwealth Seniors Health Card

Source: Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 10.

2.19 The measures will expand the relevant income tests by introducing new key concepts and definitions to the *Income Tax Assessment Act 1936* (ITAA 1936), *Income Tax Assessment Act 1997* (ITAA 1997), and Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). These include:

2.20 ***Reportable superannuation contributions***: *A* new definition of 'reportable superannuation contributions' will be inserted into the ITAA 1997 which captures the particular salary-sacrificed superannuation contributions to be considered as income for means-testing purposes. 'Reportable superannuation contributions' will include employer contributions to superannuation that the employee has influenced to be made in such a way that their assessable income is reduced. These contributions will be known as 'reportable employer superannuation contributions'. From 1 July 2009, salary-sacrificed superannuation contributions made on behalf of employees will need to be recorded and reported by employers on employee annual payment summaries.

2.21 ***Total net investment loss***: A new definition of an individual's 'total net investment loss' will be inserted into the ITAA 1997. The definition captures net losses from 'financial investments' and net rental property losses. A new definition of 'financial investment' will also be inserted into the ITAA 1997 for the purposes of this definition, to include shares in a company, interests in a managed investment scheme, investments of a like nature to shares and managed investments, and investments subject to investment loan or margin loan arrangements.

2.22 The ‘total net investment loss’ definition rationalises the various definitions of net rental property loss in current legislation in one definition. This ensures the definition of net rental property losses added to income for means-tested assistance programmes is consistent across tax and transfer legislation.

2.23 An individual will have a ‘total net investment loss’ where their deductions for an income year from financial investments and rental property exceed their gross income from those activities for the year. Deductions in respect of a financial investment may be claimed for expenses such as the costs of borrowing to invest in the financial investment or management fees charged on the investment.

2.24 ***Adjusted fringe benefits total***: A taxpayer’s ‘adjusted fringe benefits total’, which is to be assessed as income for particular tax offsets, is to be defined in the ITAA 1936. The effect of the definition is that an individual's 'adjusted fringe benefits total' will be their reportable fringe benefits for the income year multiplied by 53.5 per cent.[12] An individual's 'adjusted fringe benefits total' will be assessed in determining eligibility for the senior Australians tax offset and the pensioner tax offset.

2.25 ***Rebate income*** **and** ***income for Medicare levy surcharge purposes***: New definitions of 'rebate income' and 'Medicare levy surcharge purposes' will be inserted into the ITAA 1936 and the ITAA 1997 respectively. The definitions will be used to determine eligibility for particular means-tested tax offsets and obligations to pay the Medicare levy surcharge. The effect of these definitions is to consolidate the components of income that are assessed in determining an individual's eligibility for an offset or liability to pay the Medicare surcharge. 'Adjusted fringe benefits total' may also be relevant in determining a trustee's eligibility for the offset for low-income aged persons.

Reason for the amendments

2.26 In the Second Reading speech on the bill, the Assistant Treasurer, the Hon. Chris Bowen, stated:

> The measures bring income testing up to date with contemporary remuneration arrangements. In particular, superannuation contributions will be assessed including all deductible personal contributions made by an individual and any employer superannuation contributions made on behalf of an employee that the employee has or has had capacity to influence. An example is contributions made under a salary sacrifice agreement. These contributions will need to be reported on payment summaries from 1 July 2009.

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12 The figure of 53.5 per cent reflects the fringe benefits tax rate of 46.5 per cent. The formula may be expressed as: reportable fringe benefits tax total x {1 – 46.5 per cent} = adjusted fringe benefits total.

2.27 The EM for the bill states:

> These measures enhance the fairness and integrity of the tax and transfer systems by removing inconsistencies in the treatment of non-wage remuneration and ensure better account is taken of certain losses.[13]

2.28 An estimated 540 000 employees currently include salary sacrifice into superannuation as part of their income. The proportion of these that access government support has increased substantially since the 1990s, and is expected to increase further in the future. Current arrangements are inefficient and inequitable as they direct expenditure to individuals and families with sufficient resources to support themselves; they are also benefiting from significant concessional tax treatment of their superannuation contributions. The EM estimates the cost of inaction as approximately $160-170 million annually over the period 2009-10 to 2011-12, increasing over time.[14]

13 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 41.

14 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 78.

Chapter 3

Views on the bill

3.1 The committee received four submissions on the bill. The Department of the Treasury, which sponsored the bill, provided a submission which briefly outlined the policy justification for the measures and provided information on the process and outcomes of public consultation over the bill, mainly in respect of the reforms to income tests. Treasury also provided a second submission responding to industry submissions.

3.2 The other submissions were received from industry participants, Mercer and the Industry Funds Forum Inc (IFF), and the Australian Council of Trade Unions.

General issues

Time for inquiry

3.3 The Mercer submission expressed concern over the 'very short window of opportunity to make submissions on the bill', given the significance of some of the measures (particularly the Schedule 3 amendments).[1]

3.4 Although it did not explicitly comment on the period allowed for the inquiry, the IFF stated that it had confined its submission to comment on a couple of issues 'due to the very short time frame for consultation' on the bill.[2]

PAYG tax instalment reduction/introduction of regulations (Schedule 1)

3.5 Neither of the industry submitters provided comment on the proposed PAYG tax instalment reduction.

Temporary residents' superannuation and unclaimed money (Schedule 2)

Previous criticisms

3.6 Mercer made a submission to the committee's 2008 inquiry into the provisions of the bills that introduced the changes to the unclaimed money regime for temporary residents' superannuation.[3] While Mercer consider the measures in the current bill as

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1 Mercer, *Submission 2*, p. 1.

2 Industry Funds Forum Inc., *Submission 3*, p. 3.

3 For details see the Senate Standing Committee on Economics report, *Temporary Residents' Superannuation Legislation Amendment Bill 2008 [Provisions]; Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 [Provisions]*, November 2008.

being of 'little consequence' in the context of that new system, their submission repeats its broader criticisms of the 2008 changes.[4]

Committee view

3.7 The committee notes that a number of Mercer's concerns were examined in its November 2008 report, *Temporary Residents' Superannuation Legislation Amendment Bill 2008 [Provisions]; Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 [Provisions]*. It is also notable that Treasury undertook a consultation process on the current bill at the end of 2008, in which many of these and other issues were considered. This led to a number of changes to the proposed measures, as outlined in the Treasury submission.

3.8 The committee also observes that the issues raised by Mercer concerning the unclaimed money regime changes affecting temporary residents' superannuation are strictly beyond the scope of the inquiry. Accordingly, the committee did not examine or re-visit any such issues as they were not relevant to the content or operation of the provisions of the bill.

Reforms to income tests (Schedule 3)

3.9 The ACTU submission expressed support for the reforms to income tests as they currently appear in Schedule 3. The ACTU described the measures as 'important equity measures which remove inconsistencies in the treatment of non-wage remuneration, better target the dependency tax offsets to lower-income families and treat the income of individuals and families without access to salary-sacrificing in an equivalent way to those who are able to access such arrangements'.[5]

Ad hoc withdrawals from superannuation

3.10 The IFF expressed concern about the proposal for all withdrawals from superannuation being counted as income in the year of withdrawal. Their submission cites the example of a retiree whose total income is comprised of the aged pension and an allocated superannuation pension from which is drawn the minimum 5 per cent per annum. An additional withdrawal from the allocated pension fund for, say, the purchase of a new car, would be treated as income, thereby reducing that person's aged pension payments in that year.

3.11 The IFF submitted that reductions in aged pension payments for purposes such as the periodic replacement of assets or for health expenses will unfairly affect many superannuation fund members.[6] Accordingly, IFF urged the government to

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4 Mercer, *Submission 2*, pp 2, 9.

5 Australian Council of Trade Unions, *Submission 4*, p. 1.

6 Industry Funds Forum Inc., *Submission 3*, p. 4.

retain existing taxation laws that allow ad hoc withdrawals from superannuation without affecting aged pension entitlements.

3.12 Responding to the IFF's submission on this issue, Treasury advised:

> The [IFF] submission includes a case example involving an Age Pension recipient however reportable superannuation contributions, which are to be added to income tests for income support recipients below Age Pension age from 1 July 2009, are already assessed for individuals above Age Pension age.[7]

Committee view

3.13 The committee notes that the measures will not have the effect detailed in the example provided.

3.14 The committee notes also that the broader policy intent of the income test reforms is to remove inconsistencies in the treatment of certain types of income when determining eligibility for government support payments. These measures aim to make Australia's tax and transfer system more equitable, and are underlined by the idea that, generally speaking, government support payments are means- or income-tested. The EM explains:

> This approach promotes the underlying principle of government support that individuals with greater means to support themselves receive less support than those with fewer resources or those in greater need of assistance. Income tests are generally comprised of different types of income, such as income from work-related activities or income from investments.[8]

Employer superannuation contributions

3.15 The IFF was also concerned about the effect of employer superannuation contributions in excess of compulsory 9 per cent contributions on determining a person's eligibility for government benefits, such as Family Tax Benefit A and B.

3.16 The IFF was concerned that additional superannuation payments by an employer will be added to a person's assessable income and thus may have a detrimental effect on qualification for other benefits.[9] They suggest that in cases where an industrial agreement requires an employer contribution above the 9 per cent compulsory contribution rate, the additional contribution should be excluded for the purposes of calculating an entitlement to benefits such as Family Tax Benefit A and B.

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7 Department of the Treasury, *Submission 1a*, p. 1.

8 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 81.

9 Industry Funds Forum Inc., *Submission 3*, p. 5.

Committee view

3.17 The committee observes that the IFF's reservations about counting excess employer superannuation contributions as income for the purposes of determining eligibility for assistance payments, such as family tax benefits, goes to the heart of the policy issue driving the reform. As the EM notes, it is a source of inequity that certain fringe benefits are not currently counted as income in determining eligibility for certain government assistance programmes. Also, the proposed changes will collectively bring a more consistent approach to determining eligibility for the range of government assistance payments, thereby reducing complexity for both administrators and persons interacting with any such schemes.

Cost issues

3.18 Mercer contended that, due to the vagueness of the legislation, 'a very significant proportion of employers will need to seek professional advice as to their responsibilities' for reporting, and argues that the cost to employers of complying with the income test reforms has been underestimated.[10] It cites as an example the first-year direct compliance cost estimate:

> …the estimated costs of $648 for 25,000 small to medium businesses seem to be unrealistic. Even the cost of advice obtained in order to understand the new rules is likely to cost more than this estimate, let alone the costs of changes to systems, staff training costs and so on.[11]

3.19 The submission also notes that the EM:

- 'ignores the cost impact on many hundreds of thousands of other small businesses, who will need advice' on the changes; and
- underestimates the ongoing costs for small to medium businesses (at $33 per annum).[12]

Committee view

3.20 The committee notes that the EM provides both cost estimates and a relatively informative assessment of the impacts of the changes. The cost analysis is placed within a broader context of impact-group identification and discussion of the costs and benefits of the changes to individuals and employers (including small business), tax practitioners and other intermediaries, the Australian government and the Australian community. The committee received no evidence on which to base a finding that the compliance cost estimates are inaccurate.

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10 Mercer, *Submission 2*, p. 3.

11 Mercer, *Submission 2*, p. 3.

12 Mercer, *Submission 2*, pp 3-4.

Consistency of income tests

3.21 Mercer's view was that the proposed changes will result in a 'complex web of different rules', making it difficult for individual taxpayers to understand the content and application of various income tests, and raising the likelihood that professional financial or tax advice will be required. The submission offers a number of examples of what it calls 'the vagueness of the legislation' and recommends that implementation of the changes be delayed to allow them to be considered as part of the Henry tax review.[13]

Committee view

3.22 The committee notes that the relative complexity of the tax and transfer system will be reduced by the proposed measures, such as by introducing common definitions across a range of income tests, and aligning the income tests and $150 000 taxable income threshold for the dependency tax offset and family benefit payments. The use of the concept of 'capacity to influence', in the majority of cases, appears to be neither overly difficult to apply nor significantly likely to lead to inequitable outcomes.

Defined benefit funds

3.23 Mercer submitted that the bill makes little reference to how RESC relate to defined benefit funds, although its opinion was that the bill as written will apply to the employer sponsored portion of defined benefit arrangements. The submission states that, where a RESC does arise in relation to a defined benefit fund, the bill provides 'no method of calculation for such cases'.[14] Given this and other complexities, Mercer's position is that defined benefit funds should be excluded from the new arrangements.

Committee view

3.24 The committee notes that the EM contains a significant discussion of how the concepts of RESC and 'capacity to influence' interact with defined benefit funds.[15] An example is provided, which shows that, where a member of a defined benefit fund has the capacity to 'salary sacrifice' a member contribution, then the amount of any such contribution they have influenced to be paid (such that their assessable income is reduced) will be counted as RESC.

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13 Mercer, *Submission 2*, p. 4.

14 Mercer, *Submission 2*, p. 7.

15 Tax Laws Amendment (2009 Measures No. 1) Bill, Explanatory Memorandum, p 55.

Time for implementation

3.25 Mercer was concerned that employers would struggle to implement the changes effectively by 1 July 2009 as is currently required (enabling payment summaries prepared after this date to reflect the changes). Mercer felt that the possibility of 'significant confusion' over the reforms, and the likely need for employers to obtain advice concerning the changes, would justify delaying the changes until 1 July 2010. It recommended a date not earlier than 1 July 2010 for implementation.

3.26 The Treasury submission observed that one of the main issues raised in consultations was the commencement date of the reforms, with software companies in particular concerned that there was not sufficient time to test and implement software changes.[16] However, 'proposals to defer the commencement of the reforms were not accepted' because:

> It is considered that the changes to the RESC definitions since the consultation draft [of the bill] have simplified the definition and mitigated the compliance costs for software companies.[17]

Committee view

3.27 The committee believes that there is sufficient time for the superannuation industry, and associated industries such as software developers, to comply with the changes to income tests proposed in the bill. The income test reforms were announced in May 2008, and were the subject of a Treasury consultation process in November and December 2008, giving the industry sufficient warning and opportunity to prepare for the transition to the new arrangements. Further, the changes—mainly involving the harmonisation of definitions used across a range of programmes—are not overly technical or complex, so as to require the delay of the scheme beyond July 1 2009.

3.28 The committee notes that the Australian Taxation Office will provide clear information about the new provisions, such that most small businesses will not be required to pay for advice about their liability.[18]

Recommendation

3.29 The committee recommends that the Senate pass the bill.

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16 Department of the Treasury, *Submission 1*, p. 3.

17 Department of the Treasury, *Submission 1*, p. 4.

18 Department of the Treasury, *Submission 1a*, p. 2.

Senator Annette Hurley

Chair

Additional Comments by Coalition Senators

Coalition Senators are concerned that the definition of a reportable employer superannuation contribution (RESC) in the Bill may create an unintentional bias.

In schedule 3 of the Bill, employer superannuation contributions are treated as RESCs when a ‘capacity to influence’ exists to either influence the size or the way the superannuation payment is made. The potential bias that may arise from this definition is that employees with identical superannuation arrangements with their employers will be impacted upon differently depending on how their employment contracts were negotiated.

For example, employees A and B work for firm XYZ and both earn a salary of $65,000.00 a year with an employer superannuation contribution of 15%; 6% above the compulsory superannuation guarantee of 9%. If employee A was employed under a common law employment contract that they had negotiated personally and employee B was employed under an industrial agreement that had been negotiated by a third party (e.g. union representatives), then employee A would have their additional 6% employer superannuation contribution treated as a RESC and employee B would not.

The definition of RESCs in the Bill risks a potentially inequitable treatment of employer contributed superannuation and Coalition Senators argue that the Bill be amended to ensure that such inequality is avoided.

Senator Alan Eggleston

Deputy Chair

Senator David Bushby

Senator Barnaby Joyce

APPENDIX 1

Submissions Received

Submission Number	Submitter
1 & 1a	Treasury
2	Mercer
3	Industry Funds Forum
4	Australian Council of Trade Unions (ACTU)