

Chapter 1

Tax Laws Amendment (2010 Measures No. 1) Bill 2010 Schedule 1

About the inquiry

1.1 On 24 February 2010 the Senate referred Schedule 1 of Tax Laws Amendment (2010 Measures No. 1) Bill 2010 to the Senate Economics Legislation Committee for inquiry.¹ The bill also contains schedules related to forestry investment schemes, managed investment trusts, the entrepreneurs' tax offset, consolidation and other miscellaneous matters but they are outside the scope of this inquiry.

1.2 The Senate identified the following matters as requiring consideration and report by 15 March 2010:

- whether the legislation will have unintended consequences for the superannuation market;
- whether the legislation is anti-competitive in relation to privately operating Clearing Houses; and
- whether Medicare is an appropriate agency to operate the Clearing House under the legislation.²

1.3 The committee advertised the inquiry on the parliamentary website and identified a number of stakeholders who were invited to make written submissions by Friday 5 March 2010. The committee received nine submissions. A list of the entities that made submissions to the inquiry is set out in Appendix 1.

1.4 A public hearing was held on Wednesday 3 March 2010 in Sydney. A list of the witnesses who gave evidence at the public hearing is provided in Appendix 2.

1.5 All evidence provided to the inquiry is available on the committee's website at http://www.aph.gov.au/Senate/committee/economics_ctte/tlab_1_2010/index.htm.

1.6 The committee acknowledges the time and effort of all those who participated in the inquiry, particularly given the short reporting time frame. Their contributions have assisted the committee considerably and the committee wishes to express its appreciation and thanks.

1 Senate Selection of Bills Committee, Report No. 2 of 2010, 24 February, Appendix 5.

2 Senate Selection of Bills Committee, Report No. 2 of 2010, 24 February, Appendix 5.

Background

About the bill

1.7 Tax Laws Amendment (2010 Measures No. 1) Bill 2010 was introduced into the House of Representatives on 10 February 2010.³ The bill contains six schedules. Only Schedule 1 of the bill was referred to the Economics Legislation Committee for inquiry and report.

1.8 Schedule 1 will amend various superannuation laws to deliver the Government's 2007 election commitment to introduce an optional and free superannuation clearing house service for small businesses with less than 20 employees.⁴ The measure is designed to reduce the cost to small business of complying with their superannuation obligations by enabling these employers to extinguish their superannuation obligations with a single payment to the approved clearing house.⁵

1.9 In the 2008-09 federal budget, the Government committed \$16.1 million of funding over three years (from 2009-10) to ensure implementation of the measure; its success will be reviewed at the end of the initial three year period.⁶

1.10 If the legislation is passed the service will commence from 1 July 2010.

1.11 On 6 November 2009 Medicare Australia was named as the agency that would provide this service.⁷

3 The Hon Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services, Second Reading Speech, *House of Representatives Hansard*, 10 February 2010, p. 12.

4 The Hon Chris Bowen MP, Second Reading Speech, p. 12.

5 The Hon Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services, Superannuation Clearing House – Release of Draft Legislation, Media Release No. 040 26 November 2009.

6 Budget Measures 2008-09, Budget Paper No. 2 – Part 2: Expense Measures – Treasury, <http://www.budget.gov.au/2008-09/content/bp2/html/revenue-07.htm> (viewed 27 February 2010).

7 The Hon Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services and Dr Craig Emerson MP, Minister for Small Business, Independent Contractors and the Service Economy, Cutting Red Tape for Small Business – Superannuation Clearing House Service, Joint Media Release No 035, 6 November 2009.

Superannuation in Australia

An overview

1.12 As superannuation is one of the three pillars⁸ of Australia's retirement system it will continue to be an area of considerable focus given the future challenges of an ageing population.

1.13 Commencing from 1 July 1992 the Government introduced legislation requiring employers to provide minimum superannuation contributions for most employees.⁹ From 1 July 2005 legislation was introduced requiring employers to provide their employees with a choice as to what fund their employer contributions were paid; failure to offer the 'choice of fund' option or honour an employee's choice resulting in an increase in an employer's SGC liability. The introduction of superannuation choice increased complexity and administration for employers and lead to an increase in the use of clearing houses.

1.14 Compulsory superannuation employer contributions (currently set at 9 per cent of ordinary time earnings) are in addition to salary and wages and are required to be paid to each of employees' chosen fund by the prescribed quarterly cut-off dates, the 28th day after the end of a quarter.¹⁰ Where an employer does not make payment to the fund(s) by this date a superannuation guarantee charge (SGC) will arise. The SGC is comprised of an amount equal to the unpaid contribution plus the added components of nominal interest and an administration charge.

1.15 In these circumstances the employer is required to lodge an SGC statement and pay the amount for which they are liable to the Australian Taxation Office by the 28th day of the second month after the end of the quarter.¹¹ (An SGC assessment is deemed to be made on receipt of the SGC statement by the Tax Office.)¹² The employer is then required to pay the SGC liability to the Tax Office who will forward the amounts to the employees' funds of choice.¹³ In instances where the SGC remains unpaid (to the Tax Office) general interest charge will accrue until the employer has paid the outstanding amount.

8 The other two pillars are the government funded aged pension and personal savings.

9 Section 2, *Superannuation Guarantee (Administration) Act 1992* (SGAA).

10 Tax Laws Amendment (2010 Measures No. 1) Bill 2010, Explanatory Memorandum, p. 13.

11 The dates of 28th day of the second month after the end of the quarter are the 28 November, 28 February, 28 May and 28 August – section 46 of the SGAA 1992.

12 Section 35 of the SGAA 1992. The date that the deemed assessment is taken to have been made will differ depending on when the statement is received by the Commissioner. This impacts the calculation of nominal interest and GIC if the payment remains outstanding after it is deemed to have been made.

13 The administration charge is retained by the Tax Office. All other components of the SGC, as well as any interest that accrues, are remitted to the employee's fund after it has been paid.

Recent developments

1.16 Since its introduction in 1992 Australia's superannuation regime has undergone much legislative amendment, major developments including the introduction of the superannuation co-contribution,¹⁴ choice of fund legislation,¹⁵ abolition of superannuation surcharge and amendments to the tax treatment of benefits on exiting the fund. These changes have also increased the administrative tasks for employers when discharging their superannuation obligations.

1.17 Given the administrative requirements involved with superannuation some employers engage superannuation clearing houses and/or payroll providers to assist them in discharging their obligations. In these circumstances the employer provides the relevant and required information and payment to the clearing house/payroll provider who, for a fee, remits the information and payment to each of the employees' funds. In these circumstances the employer's superannuation obligation remains unmet until the fund has received the required information and payment.

The Government initiative

1.18 In recognition of the increasing administrative burden on small business that legislative development in this area is having, the Government will, through this initiative, introduce a free clearing house service.

1.19 Small businesses that choose to engage the clearing house service will have their legal obligation to make superannuation contributions discharged when payment of the correct amount is made to the clearing house.¹⁶ The clearing house will also manage the employer's choice of fund obligations.¹⁷

Structure of the report

1.20 The report is comprised of three chapters:

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- 14 The co-contribution is designed to encourage low income earners to save for their retirement through the introduction of a scheme which provides for the government to match voluntary additional payments up to a maximum amount of \$1500. There are strict eligibility requirements that must be met to access the co-contribution.
 - 15 Choice of fund legislation was introduced from 1 July 2005 to ensure employees are given the right to choose the fund into which their compulsory employer contributions are paid. Failure by an employer to offer choice of fund results in an additional superannuation guarantee liability – the SGC will be increased by a prescribed amount.
 - 16 The Hon Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services and Dr Craig Emerson MP, Minister for Small Business, Independent Contractors and the Service Economy, Cutting Red Tape for Small Business – Superannuation Clearing House Service, Joint Media Release No 035, 6 November 2009.
 - 17 The Hon Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services and Dr Craig Emerson MP, Minister for Small Business, Independent Contractors and the Service Economy, Cutting Red Tape for Small Business – Superannuation Clearing House Service, Joint Media Release No 035, 6 November 2009.

- Chapter 2 details the changes that will be introduced through Schedule 1 of the bill explaining how they will operate; and
- Chapter 3 identifies and discusses concerns that have been raised with the proposed amendments before providing the committee's views and recommendations in respect of the areas identified by the Senate as requiring investigation.

