Supplementary submission
Taxation Institute of Australia
22/05/02

Additional Comments on Taxation Of Foreign Superannuation Benefits

1. Where a person is a resident of Australia and transfer their money between two overseas superannuation funds then technically part of the amount can be taxable. The legislation applies to a lump sum paid from a non-resident non-complying superannnuation fund. There is no requirement that the payment be made to a fund in Australia to be caught under s27CAA.

2. The 6 month requirement seems to have some type of link with residency requirements for tax purposes. The extension of time to 12 months is fine. However, in many cases the person will still not be a resident for immigration purposes. Maybe the transfer to Australia should have an immigration test link rather than the tax link as the person may not really consider the transfer of superannuation until they become an Australian resident.

3. In some overseas superannuation funds there is no vesting until the person reaches a certain age. For example, in the UK post office fund the members are not entitled to a benefit until they are 55. If a person comes to Australia before they are 55 then the vested amount could be caught under s27CAA. This would apply even though the benefit has, in effect, accrued over the person's working life overseas, which could be quite substantial.

4. Where a pension paid from overseas is commuted there are no clear rules as to the amount of the commutation which comes within s27CAA. In many cases the actuary of the overseas superannuation fund is not willing to do separate calculations based on the requirements of the Australian tax law. In other cases the cost of obtaining the actuarial valuation is greater than the benefit itself.

5. The current rules discriminate against those who have been in Australia for a relatively long time and for whatever reason have been required to leave their money in the overseas fund. This would occur where a person has been paid a pension from the overseas superannuation fund and because the amount in the fund has reached a minimum amount the fund rules require the benefit to be commuted to a lump sum. If the person has been in Australia for a ling time, say since the 1960s then virtually the whole of the benefit is taxable. If this person had been allowed to transfer his benefit to Australia on arrival in the 1960s the commutation would receive highly concessional tax treatment or may be exempt.