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Regulating retail investment products

Zein El Hassan CLAYTON UTZ

Superannuation funds have substantial investments in instalment warrants and receipts — investments that are likely to increase following the changes to tax laws. This article examines whether superannuation law permits these investments and discusses the latest position of the regulators and the government's favourable response.

The changes to the taxation laws applying to superannuation funds are likely to see a large amount of money being invested in superannuation funds, particularly self-managed superannuation funds (SMSFs). Investment by these funds currently comprise a significant proportion of the market for instalment warrants and receipts, and this level of investment is likely to increase as these products are heavily marketed to SMSFs. Given the size of the investment by SMSFs in these products, it would be reasonable to assume that there should be no issue regarding their treatment under superannuation law. However, in November 2006 the federal government advised that the regulators have changed their mind in relation to some of these products (see next page).

This article examines the views of the regulators over time and the latest position regarding the treatment of these products under superannuation law.

Key product features

Instalment receipts basically offer:

- direct access to shares, managed funds and other assets;
- an increased exposure to those assets by making a part of the payment upfront and delaying the final payment until a later date;
- payment of interest on the amount of the final payment;
- entitlement to dividends and other distributions and changes in the value of the underlying securities;
- optional payment of the final payment;
- limited recourse by the issuer to the investor as the final payment is optional; and
- some element of capital protection through the issue of put options.

Examples of instalment receipts include the Telstra and Commonwealth Bank instalment receipts that were issued by the federal government as part of the sale of those businesses.

Instalment warrants are similar to instalment receipts except that they include an advance of money by the issuer to the investor to fund part of the purchase price for the underlying securities.

These products are economically similar to capital protected loans and margin loans, but with some differences. However, while these other products are not permitted investments for superannuation funds, the instalment products are permitted under superannuation law.

Superannuation law

Superannuation trustees need to consider superannuation law and any other relevant laws that may affect their ability to invest in instalment products. The main legislation comprising superannuation law are the *Superannuation Industry (Supervision) Act 1993* (Cth) (the SIS Act) and *Superannuation Industry (Supervision) Regulations 1994* (Cth) (the SIS Regulations).

While not an exhaustive list, the key requirements of superannuation law include:

- prohibition on a superannuation trustee borrowing money except in limited circumstances (s 67 of the SIS Act);
- prohibition on a superannuation trustee giving a charge over or in relation to an asset of the superannuation fund except in limited circumstances (regs 13.14, 13.15 and 13.15A of the SIS Regulations); and
- 5 per cent limit on 'inhouse' assets (Pt 8 of the SIS Act).

If any of these requirements are contravened, the investing superannuation fund may lose its concessional treatment under Australian taxation laws.

There are a number of other requirements of superannuation law that may apply to investing in instalment products, including:

- formulating and implementing an appropriate investment strategy in accordance with s 52(2)(f) of the SIS Act; and
- the proper use of derivatives in accordance with APRA's Superannuation Circular No II.D.7, updated in July 2006.

These two requirements do not, by themselves, prohibit superannuation trustees from investing in instalment products. Rather, the circumstances of the particular fund may mean that investing in these products may not be appropriate for that fund.

Borrowing prohibition

Section 67 of the SIS Act prohibits superannuation trustees from borrowing money, subject to certain exceptions, which do not apply to these products.

The two essential features of a 'borrowing' under the SIS Act are that:

- there is an advance of money; and
- it is advanced on condition that it will be repaid.

If an instalment product does not have these features, it should not breach the borrowing prohibition.

Instalment warrants

Instalment warrants usually include an advance of money, but there is usually no obligation to repay the advance because the final payment is optional. If the investor decides not to make the final payment, the underlying securities are transferred to the issuer or sold and there is no further recourse against the investor. As there is no obligation to repay the amount advanced, these instalment warrants should not involve a borrowing.

The regulators appeared to accept this position until 3 November 2006, when the federal government issued a media release to the effect that the regulators had changed their mind and now believed that instalment warrants involved a borrowing (Minister for Revenue and Assistant Treasurer, the Hon Peter Dutton MP, Investment in Instalment Warrants by Superannuation Funds', Media Release No 078). However, given the level of investment by superannuation funds in these products, the government announced that it would insert an exception into the borrowing prohibition for what it called 'traditional instalment warrants'.

There is an implication in the media release that warrants that are not 'traditional instalment warrants' will no longer be permitted by the regulators. There is now some uncertainty regarding what are 'traditional instalment warrants', and the industry is waiting for clarification as to the meaning of this concept. I believe that instalment warrants that have the features, and are structured in the manner described in this article, should fall within that concept. However, it will depend on the precise wording of the proposed exception.

Instalment receipts

Instalment receipts (such as the Telstra and Commonwealth Bank instalment receipts) usually involve the part payment of the purchase price upfront and a deferral of the payment of the balance of the purchase price until a later date. These instalment receipts do not involve any advance of money. There is clear legal authority that the deferral of the payment of part of the purchase price for property is not a loan. As there is no amount advanced, these instalment receipts should not involve a borrowing.

There is no suggestion from the media release that the regulators had changed their minds in relation to instalment receipts. Therefore, it should be quite clear that instalment receipts that have the features and are structured in the manner described above should not involve a borrowing for the purposes of superannuation law.

Charging prohibition

Under regs 13.14, 13.15 and 13.15A of the SIS Regulations, a superannuation trustee must not give a charge over in relation to an asset of the fund. Again, there are certain exceptions but they do not apply to these investment products.

The term 'charge' is defined in reg 13.11 to include a mortgage, a lien or any other encumbrance. Those terms are not defined in the SIS Act and take their ordinary meaning. As the definition of charge is an inclusive definition, it also takes its ordinary meaning.

A charge will include an equitable mortgage or a power of sale, which are common features of these products. However, it is possible to structure these products so that the superannuation trustee is not giving the charge.

Rather, the charge should be built into the product with the super fund getting the net interest. If built in this way, the product should not breach the charging prohibition.

Inhouse assets

Generally, superannuation funds must not hold more than 5 per cent of their assets in inhouse assets. An inhouse asset includes an investment in a related trust of the superannuation fund. It is a common feature for instalment products to have a security trust as part of their structure.

A related trust includes a trust that a member of the superannuation fund controls within the meaning of Pt 8 of the SIS Act. A member controls a trust for this purpose where:

- they have a fixed entitlement to 50 per cent or more of the income or capital of the trust; or
- the trustee of the trust acts in accordance with their directions.

Under instalment products, the underlying security is held on a bare trust by the security trustee for the investor. For SMSFs, this trust may qualify as a related trust based on either limb of the definition of control. This is unlikely to be an issue for larger funds as it is unlikely that a single member will satisfy the definition of control.

However, where the underlying security is listed, an exception applies so that the security trust will not be an inhouse asset. If the underlying security is not listed, I still believe that the inhouse asset rules will not be breached because the superannuation fund is not investing in the security trust — rather, it is investing in the underlying securities.

Summary

Instalment warrants and receipts that have the features, and are structured in the manner described in this article, should comply with the borrowing, charging and inhouse asset requirements of superannuation law. However, superannuation trustees still need to consider whether particular instalment products are appropriate investments for their particular superannuation fund. ●

Zein El Hassan,
Partner,
Clayton Utz,
<*zelhassan@claytonutz.com*>.

Fund GOVERNANCE

Where's Wally? Debate continues on trustees' responsibilities for member investment directions

Michael Vrisakis
FREEHILLS

Main point

Debate continues on the obligations of trustees in relation to member investment directions, but in the view of the author the attribution of protectionist duties on trustees premised on their duty of best interests is not legally supportable. The recent Federal Court decision in *Wallace*, while not dealing with this substantive point, did quash the SCT's decision on this issue on jurisdictional grounds.

This article examines aspects of a presentation recently given by Dr Laker and of the recent *Wallace* case (*Perpetual Trustees Australia Ltd v Wallace* [2007] FCA 527; BC200702612).

In a very recent presentation hosted by the Investment and Financial Services Association (IFSA), Dr John Laker, Chairman of the Australian Prudential Regulation Authority (APRA), said the following:

> First, there is still some considerable industry concern regarding APRA's investment management circular (11.D.1), particularly with regard to APRA's perceived non-recognition of the role of the financial adviser and APRA's guidance on diversification at the member level.
>
> The issue raised in some submissions seems to be that trustees can be put in a difficult position where they need to comply with the APRA circular regarding the need to base investment strategies on the fund circumstances while trying to respond to individual member choice.
>
> You would recall that APRA released the revised investment management circular in March 2006 after a long and intensive consultation process with the major industry representative bodies (including IFSA) and government. While the SIS Act [*Superannuation Industry (Supervision) Act 1993* (Cth)] does not expressly prevent a trustee from considering financial planner advice, the trustee must consider all the circumstances of the entity when formulating and implementing an investment strategy. Consequently, financial planner advice can only be one input into the process. Further, the trustee's fiduciary obligation to prudently safeguard superannuation benefits has no ability to take into account the circumstances of the member outside the fund itself.
>
> The investment management circular does not set hard limits. It reflects the legislation in acknowledging trustees' responsibility and adopts a flexible approach. However, as the circular notes, in our view it is difficult to conclude that the trustee is acting in the best interest of members if narrow or risky choices are made available without regard to the proportion of the member's interest that the trustee will allow to be placed in a particular strategy.
>
> APRA continues to have concerns regarding investment strategy issues, particularly if trustees were to abrogate responsibility in favour of members themselves or their financial planners.

The investment management circular referred to by Dr Laker discusses and debates what trustees should do in the face of an APRA pronouncement, which formulated the proposition highlighted above.

It seems to me that from a prudential regulatory perspective, APRA's stance is very much understandable.

The framework of reference as resting on the foundation of the best interests duty does not, with respect, mesh with the legal nature and parameters of the duty. As commented upon in last month's column ((2007) *SLB* 18(8)), the 'best interests' duty is not a result-orientated test. It allows only one possible exception in this regard, and that is, where no reasonable trustee could have reached that particular decision (that is, outcome).

There are various aspects of this issue, including the fact that where the trustee gives the member this type of investment direction, it is bound by the direction. This would suggest that, absent power in the trust deed, it could not intervene and countermand that direction. This, then, tends to negate any requirement that a trustee should not give effect to such a direction (which was a suggestion in one of the earlier iterations of the circular).

This understandably leads to the point taken by APRA that a prudent trustee should impose restrictions on investment choices. The use of the term 'risky choices' is somewhat beguiling because it tends to suggest the characterisation of an option as imprudent or speculative.

The perspective that the trustee cannot take into account investments held outside of the superannuation fund begs the question as to why.

Certainly, the archetypical view of the best interests test proceeds on the basis that the trustee must have regard to the financial interests of the members.

But this does not necessarily mean that those interests are circumscribed by their interests in the trust fund, particularly when the interests of members could be seen to equate to their ability to maximise the return from investments available on the investment menu.

The APRA stance does tend to suggest that if a protectionist stance is taken (and I do not suggest this) it should be underpinned by a separate regulatory foundation.

So, where's Wally? The Federal Court decision in *Wallace* has also come out very recently. As readers will recall, the case involves an appeal from the decision of the Superannuation Complaints Tribunal (SCT) which found, inter alia, that allowing an investor to invest the majority of their superannuation benefits in equities was not consistent with the SIS legislation. The SCT determination was not, however, appealed on this particular point but rather on jurisdictional grounds. The appeal of the trustee succeeded. One of the grounds of appeal, which was accepted by Edmonds J, was that the claim was in fact a personal claim against the trustee and not a claim against the fund.

In the course of his Honour's judgment, the point was made that the SCT does not have jurisdiction to entertain a claim which is made against a trustee in its personal capacity.

His Honour found that the claim was against the trustee personally as the Fund had in fact been terminated and the cause of action under s 55 of the SIS Act is one framed personally. Section 55(3) states that a person who suffers loss or damage can recover against a particular person.

The SCT had submitted that the test of whether a claim is made against a trustee personally or against the fund is whether the trustee has a right of indemnity against the fund based on dicta emanating from the case of *Retail Employers Superannuation Pty Ltd v Crocker* (2001) 48 ATR 359. Edmonds J distinguished the circumstances of *Crocker*. He said:

> The applicant submits that the following propositions emerge from the foregoing analysis of *Crocker*:
>
> (a) *Crocker* expressly proceeded on the basis that the claim made was not a claim for compensation from the trustee for breach of trust but rather a claim under the policy for a benefit due from the fund ([131]);
>
> (b) it not being a personal claim, it was able to be compromised under clause 7(c) ([130]–[131]);
>
> (c) had the claim been a personal claim, it would have been necessary to deal with the argument at [128] that the determination of the claim would have involved the adjudication of rights ([131]); and
>
> (d) had those issues arisen — and they did not — his Honour's expressed view (at [15]–[16]) was that such a process by the Tribunal [SCT] would have involved the exercise of judicial power.
>
> I agree with this submission. Understanding the observations of his Honour at [140] and [141] extracted at [47] above in this context, what his Honour was considering at [141] was whether a claim, which was clearly a claim 'against the Plan', was a claim against the trustee because of the lack of any indemnity against the trust assets. This is not the case. Here the claim of the respondent is clearly a claim against the applicant and not against the Fund. In any event, there is no right of indemnity against the trust assets because by the time the claim was made there were no trust assets. It was tentatively suggested by Senior Counsel for the [SCT] that the applicant would have been insured against any loss it suffered as a result of paying compensation to the respondent and in that sense the applicant had the benefit of an indemnity. But even if the applicant carried such insurance, it would be an indemnity sourced outside its position as trustee of the fund and nothing that was said in the passages extracted from *Crocker* would work a conversion of the claim from one against the applicant to one against the fund.

The *Wallace* case represents a very important jurisdictional fetter on the SCT and consolidates a trend emerging from the *Crocker* case. The analysis of whether an action is against the trustee in a personal capacity or against the trustee in a proprietary (or fund) capacity is one that is particularly important. ●

Michael Vrisakis,
Partner,
Freehills,
<*Michael.Vrisakis@freehills.com*>.

AUSTRALIAN
Superannuation
LAW BULLETIN

Superannuation in an overall tax/asset management plan

Paul Cosgrave SC
BARRISTER

Main points

This article will deal with the following principal issues:[1]

- the existing taxation regime as it relates to the taxation of superannuation funds, especially contributions and benefits — the reference to benefits will include a discussion of eligible termination payments, death benefits and aged pension arrangements; and
- the changes proposed for superannuation law in this country from 1 June 2007 regarding taxation of contributions and benefits.

The significance of superannuation is increasing because of the government's apparent reluctance to provide pensions and otherwise support those who have retired from the workforce.

As a result of superannuation's growing prominence, the taxation of this valuable asset assumes greater significance. The implications are important for existing superannuants, those in the baby boomer generation who are soon to assume that status, and the federal government whose budgetary and spending behaviour may well be affected.

Taxation of superannuation funds

The following comments in relation to the taxation of superannuation funds assume that we are dealing with complying superannuation funds — that is, funds that meet the conditions specified in the *Superannuation Industry (Supervision) Act 1993* (Cth) (the SIS Act).

Complying superannuation funds are not subject to income taxation other than as set out in Pt IX of the *Income Tax Assessment Act 1936* (Cth) (the ITAA 1936). In determining what is taxable income for these purposes, the legislation takes into account certain contributions, special exclusions or exemptions, and special deductions.

Taxable income has two components, the standard component and the special component. The standard component is the total taxable income minus the special component. The standard component is taxed at a rate of 15 per cent and the special component at a rate of 45 per cent.

As a matter of general principle, contributions to a complying superannuation fund are regarded as capital and not income. Hence, it is by way of statutory intervention that some contributions are treated as 'taxable contributions'. The taxable contributions in complying funds comprise:

- contributions made to provide superannuation benefits for another person — most commonly this applies to contributions made by an employer on behalf of an employee;
- eligible termination payments that are rolled over to the extent that the payment contains an untaxed element of the post-June 1993 component of the payment;
- payments into the fund through the Australian Taxation Office (ATO) of any shortfall in the superannuation guarantee charge; and
- personal deductible superannuation contributions made by someone seeking to obtain superannuation benefits for a member (or the member's family upon death) where the contribution is covered by a s 82AAT(1)(a) notice.

Excluded from the concept of taxable contributions are eligible spouse contributions and contributions for children under the age of 18.

Generally, complying superannuation funds can obtain deductions for the normal kinds of expenditure and expenses incurred in running a fund. These include:

- administration fees, including staff costs and costs payable to external consultants;
- costs in obtaining advice from asset consultants, financial advisers, brokers, actuaries and the like;
- accounting and auditing costs; and
- annual compliance costs to satisfy criteria laid down by APRA or another regulatory body. The Commissioner accepts[2] that where a fund alters its trust deed to comply with a legislative requirement, the cost is deductible because it enables the fund to maintain its complying status.

Funds that offer members death or disability insurance benefits can deduct the cost of the benefits provided either by reference to the premium paid or the actual cost.[3] However, s 279 of ITAA 1936 does not allow deductions for insurance premiums regarding trauma policies.

Special income is taxed at a rate of 45 per cent (the rate was 47 per cent before the financial year ending 30 June 2007). Pursuant to s 273 of the ITAA 1936, the special income of a complying superannuation fund (or a complying approved deposit fund or a pooled superannuation trust) comprised dividends paid by private companies, certain income derived from non-arm's length transactions, and certain payments made to trust beneficiaries.

Taxation of superannuation contributions

The tax treatment of contributions to superannuation funds depends on a variety of factors, including the person or entity making the contribution, the person or persons for whom the contribution is made, and the status of the fund to which the contribution is made.

Since July 1997, the government has created age-based contribution limits that specify the amount of superannuation contribution that will be taxed concessionally. The age-based limits, which apply until 30 June 2007, are as follows [Table 1].

Table 1

Age	Amount
Less than 35	$15,260 per annum
35–49	$42,385 per annum
50–69	$105,113 per annum

In each case, the amount specified is the upper limit of the amount contributed to superannuation that will be subject to a concessional taxation arrangement. In each case, the contribution will be taxed at 15 per cent.

Where employers make a contribution to a complying superannuation fund for a person who is an employee, or treated as such pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth), the employer is entitled to a deduction in respect of that contribution.

Usually, in order to make a contribution, the employer must actually pay money by cash or cheque into the superannuation fund. However, the ATO accepts that where an employer makes a payment on behalf of a superannuation fund to meet an expense or obligation incurred by the fund, and the fund treats the payment as if it were a contribution in its account books, the employer will be entitled to a deduction.

Subject to two exceptions, an employer can usually make deductible contributions to a superannuation fund on behalf of an employee until the employee turns 70 years of age. The exceptions are:

- where the contribution reduces the employer's superannuation guarantee charge obligation with the amount of the deduction being limited to 9 per cent of the employee's notional earnings base — such an exception is necessary because even though the superannuation guarantee contributions are paid only until an employee turns 70, the payment might not be physically made until 28 days after the end of the quarter in which this takes place, rather than within 28 days after the end of the month in which the employee turns 70; and
- where the contribution is required in order to satisfy the employer's obligations under an applicable industrial award or determination.

In the various states and territories, superannuation contributions made by an employer to a complying fund are treated as wages for the purposes of payroll tax.

Self-employed persons are currently entitled to claim a full deduction in respect of the first $5000 contributed to superannuation. With respect to any amount in excess of this, a deduction of 75 per cent up to a maximum deduction equal to the individual's age-based limit is allowed.

If an individual who is not self-employed seeks to make a superannuation contribution, the person can salary sacrifice an additional amount so that the total contribution for the financial year does not exceed the age based limit. Alternatively, the person can make an undeducted contribution. This also applies to after-tax moneys contributed to the fund.

Individuals aged between 70 and 74 are entitled to contribute to superannuation wherever they meet work test requirements. However, they cannot claim a deduction for such contributions. The work test requirements stipulate that a person be gainfully employed on at least a part-time basis during the financial year in which the contributions are made. The person must have worked at least 40 hours for a period of not more than 30 consecutive days during the financial year.

Proposed changes to taxation of contributions

Employers will be entitled to a full deduction for all contributions to superannuation made on behalf of employees provided that certain conditions are satisfied. The contribution must be made for the purpose of providing superannuation benefits for the employee or the employee's dependants upon the death of the employee. It is not proposed that the expanded definition of employee given in s 12 of the *Superannuation Guarantee (Administration) Act* be altered.

The conditions that must be satisfied for the employer contributions to be deductible have been simplified. The age-based deduction limits will be removed. In addition, employers may receive a full tax deduction for all contributions to superannuation on behalf of employees under the age of 75 (as opposed to the current age of 70). This is designed to allow older employee to enter into superannuation salary sacrifice arrangements. However, employers will only be able to claim a deduction for contributions in respect of employees aged 75 and over if those contributions are required to be made under an industrial award, determination or notional agreement preserving state awards.

Superannuation contributions for former employees would ordinarily not be deductible because it is required that the contribution be made at a time when the individual is an employee. However, contributions for former employees which have the effect of reducing an employer's superannuation guarantee charge percentage (that is, to meet the superannuation guarantee obligation) will continue to be deductible provided the other conditions for deductibility are satisfied.

Deductions will remain available for superannuation contributions made after the death of an employee where the contribution is made to satisfy a superannuation guarantee obligation or pursuant to a salary sacrifice arrangement.

The proposed legislation provides that self-employed persons and other eligible individuals will be entitled to a full deduction for superannuation contributions provided that certain conditions are met. The contributions will be deductible if less than 10 per cent of the person's assessable income and reportable fringe benefits are attributable to employment as an employee. The test will no longer be determined by the level of employer superannuation support a person receives or should have received. The legislation will also increase the age at which a self-employed person can claim a deduction to 75 (the current age is 70).

The legislation imposes a cap of $50,000 per person per year for concessional contributions. This cap will be indexed. Any contributions made in excess of $50,000 will be taxed at a rate of 31.5 per cent. This tax will be imposed upon the person for whose benefit the payment is made, and the person will be able to withdraw an amount equal to his or her tax liability from his or her superannuation fund.

The legislation will also provide a transitional arrangement in respect of superannuation contributions. The legislation will provide a transitional concessional contribution cap of $100,000, which will apply to individuals aged 50 or more between the financial years ending 30 June 2008 and 30 June 2012. This effectively means that anyone who is aged at least 50 on the final day of a financial year between that period is entitled to contribute and claim a full deduction of $100,000 as opposed to the normal cap of $50,000. This transitional cap will not be indexed.

With respect to undeducted contributions, which are made from an individual's after-tax income, such contributions would remain tax-free when contributed to, and withdrawn from, superannuation. There will be a cap of $150,000 a year upon the amount of non-concessional (generally undeducted) contributions a person can make to superannuation after 1 July 2007. In order to accommodate larger contributions, persons under the age of 65 will be able to bring forward future entitlements so that they have a cap of $450,000 applicable over any three-year period.

It is proposed to extend the federal government's co-contribution scheme to the self-employed. Persons, including the self-employed, would be eligible for the government co-contribution if:

- they earn 10 per cent of their income from carrying on a business, eligible employment or a combination of the two;
- their income is under the upper threshold for the government scheme; and

- the person is less than 71 years of age at the end of the relevant income year.

Superannuation contributions made by a self-employed person would be matched at $1.50 for every dollar contributed up to the maximum co-contribution limit of $1500. This maximum co-contribution would be available for persons on incomes up to the lower threshold of $28,000. As is this case with employees currently, the co-contribution would only be payable on undeducted contributions.

The maximum co-contribution is reduced at a rate of 5c for every dollar of total income over the lower threshold. It ceases at the upper threshold of $58,000. It is proposed that the lower threshold be indexed in line with full-time average adult weekly ordinary time earnings. A corresponding adjustment would be made to the upper threshold.

Table 2 ***Comparison of current system to proposed system***

Component	Current tax treatment	Proposal
Pre-July 1983	5 per cent taxed at marginal rates	
Concessional	5 per cent taxed at marginal rates	
Undeducted contributions	Exempt	Exempt component
Post-June 1994 invalidity	Exempt	
Capital gains tax exempt	Exempt	
Non-qualifying	Marginal rates	Taxable component
Post-June 1983	Taxed as per table below	(see below)
Excessive	38 per cent	Abolished

Table 3 ***Taxable component***

Taxpayer's Age	Current tax treatment (for post-June 1983)	Proposal
Under 55	20 per cent	20 per cent
Age 56–59	Up to threshold ($129,751) — 0 per cent Over threshold — 15 per cent	Up to threshold ($129,751) — 0 per cent Over threshold — 15 per cent
Age 60 and over	Up to threshold ($129,751) — 0 per cent Over threshold — 15 per cent	Exempt

Taxation of superannuation benefits

Superannuation benefits can be paid by way of lump sum or pension. Such benefits are usually paid on termination of employment — whether through retirement, redundancy or death.

Lump sum payments made to persons in consequence of a termination of employment or from superannuation funds are subject to special tax treatment under the relevant legislation. Special rules apply to these eligible termination payments (ETP). While there is an extensive definition of ETPs in s 27A(1) of the ITAA 1936, the two main categories are payments from superannuation funds, except those taken as a pension, and employer payments made in consequence of termination of a person's employment.

An important feature of the existing superannuation system in the area of benefits is the reasonable benefit limit (the RBL). The RBL operates to specify the maximum amount of superannuation a person is entitled to receive during his or her lifetime on a concessionally taxed basis. The RBL has effect in relation to all payments received that are retirement payments, whether they be superannuation pensions, benefits paid by employer-sponsored or personal superannuation funds. There are separate RBL limits in respect of lump sum payments and pension payments. In general terms, the pension RBL is about twice the size of the lump sum RBL. If a person receives a lump sum benefit that exceeds the lump sum RBL, the amount in excess of the RBL is taxed as an excessive component. If a taxpayer receives a pension or annuity that exceeds the pension RBL, the excessive element is taxed at marginal rates and does not attract the 15 per cent rebate, which would apply otherwise.

The lump sum payment of superannuation benefits is classified as an ETP and is divided into various components, each of which is subject to particular tax treatment. The possible components of such an ETP are:[4]

- a concessional component;
- a post-June 1994 invalidity component;
- undeducted contributions;
- a non-qualifying component;
- an excessive component;
- a CGT exempt component;
- a pre-July 1983 component; and
- a post-June 1983 component.

Some of these categories are reasonably clear but others are not.

An ETP may have a CGT exempt component if the member rolled over the proceeds of certain business assets for retirement. The exemption applies only where the net value of assets of the business does not exceed $5 million. Individuals are allowed to claim an exemption on capital gains amounts up to a lifetime limit of $500,000.

The non-qualifying component is the earnings of any non-ETP money that was used to purchase an annuity and that annuity is now a commutation or residual capital payment. To qualify, it must have been purchased before 12 January 1987 as a deferred annuity or 9 December 1987 as an immediate annuity.

The pre-July 1983 component is that amount of the payment that relates to pre-July 1983 employment or fund membership.

The manner in which each of the above components is taxed is summarised in Tables 2 and 3 above.

Pension payments received by a superannuant are included in the person's assessable income and taxed at marginal rates. A deduction is allowed for the return of contributions that were made towards the pension from the person's after-tax income and

Table 4 ***Summary of existing taxation of employer ETPs***

Component	Assessable portion	Current tax treatment
Post-June 1994 invalidity component	Not assessable	Exempt
Pre-July 1983 component	5 per cent	Marginal rates
Post-June 1983 component (untaxed)	100 per cent	Under age 55 — 20 per cent Age 55 and over Up to threshold ($129,751 — 15 per cent Over threshold — 30 per cent
Excessive component (amount above RBL)	100 per cent	47 per cent

Table 5 ***Summary of proposed taxation of employer ETPs***

Component	Assessable portion	Current tax treatment
Component	**Assessable portion**	**Proposed tax treatment**
Exempt (post-June 1994 invalidity and pre-July 1983 amounts)	Not assessable	Not applicable
Taxable	100 per cent	Under age 55 Up to $140,000 — 30 per cent Over $140,000 — Top marginal tax rate (MTR)
		Age 55 and over Up to $140,000 — 15 per cent Over $140,000 — Top MTR

certain amounts. Also, a 15 per cent tax rebate is frequently available to recipients aged at least 55 in respect of pensions paid from a taxed fund. The rebate is available on the amount of the pension, which is included in the recipient's assessable income. The rebate is available only for amounts up to the applicable RBL.

The changes proposed regarding benefits depends upon the age of the recipient.

Where an individual is aged at least 60, all lump sum benefits paid from a taxed source to the individual will be tax-free when paid. As RBLs have been abolished, people will be encouraged to contribute more to superannuation.

All pension payments from a taxed source will be tax-free when paid to persons aged 60 or more including pensions that commence before 1 July 2007. As above, RBLs are abolished.

Because superannuation benefits to individuals over 60 will normally be tax-free, individuals won't need to include lump sum superannuation benefits or superannuation pensions in their tax returns. This will lower their taxable income and potentially affect the tax payable on other income.

Under present arrangements, if a person aged between 55 and 59 received a superannuation benefit, the taxation treatment is the same as for a person aged 60 or more. However if the recipient is less than 55 and receives a lump sum benefit, higher rates of tax are payable on the post-June 1983 component. If the individual receives a pension, no rebate is available.

The proposal in respect of people aged less than 60 is that lump sum payments be divided into two components — an exempt component and a taxable component. The exempt component will be tax-free and comprise the pre-July 1983 component, the CGT exempt component, the post-June 1995 invalidity component, concessional component and undeducted contributions. The taxed component, comprising the post-June 1983 component and the non-qualifying component, would be tax-free up to the low rate threshold, which in the financial year ending 30 June 2006 was $129,751 and taxed at

15 per cent above that threshold. For persons under 55, this component will be taxed at 20 per cent.

Generally, pension payments for individuals under 60 would continue to be taxed in accordance with the current arrangements, although the tax would be lower in some cases. A rebate of 15 per cent would apply to all pensions paid from a taxed fund where the individual is aged between 55 and 59. As noted, once the recipient turns 60, the pension would be tax-free.

When an employer makes a payment to an employee on termination of employment, the employer ETP can include payments related to:

- unused rostered days off;
- amounts in lieu of notice;
- an amount representing a 'golden handshake'; and
- bona fide redundancy or approved early retirement scheme payments in excess of the tax-free amount.

Employer ETPs have a post-June 1983 untaxed element and in some cases a pre-July 1983 component, invalidity component and excessive component. The tax treatment of these payments is set out in Table 4 on p 114.

At present, superannuation benefits and employer ETPs are combined in assessing whether or not they exceed a person's RBL. Given that RBLs are to be abolished, this has an impact upon employer ETPs. The proposed legislation divides employer ETPs into two elements — the exempt and the taxable. The exempt component includes any post-June 1994 invalidity amount and the pre-July 1983 amount. These two amounts are exempt from tax. The taxable component would be the post-June 1983 amount. This is to be taxed at 15 per cent for amounts of up to $140,000 for recipients aged at least 55 and taxed at a rate of 30 per cent for recipients aged less than 55. Where a person received an amount in excess of $140,000, the excess will be taxed at the top marginal rate. The proposed taxation regime is set out in Table 5 on p 114.

At present, individuals can rollover an employer ETP into a superannuation fund. This has the effect of deferring the payment of any tax until the ETP moneys are paid out to the person as a superannuation benefit. Because under the proposed legislation, superannuation benefits paid to those over 60 will be tax-free, the proposed legislation prevents the rollover of employer ETPs into superannuation. ●

Paul Cosgrave SC,
Barrister,
<*cosgrave@chancery.com.au*>.

Endnotes

1. The text draws heavily from documents produced by the Treasury, especially 'A plan to simplify and streamline superannuation — May 2006' and the Commonwealth Parliament, including draft legislation and commentary.
2. Taxation Ruling IT2672.
3. See ss 279 and 279B of the ITAA 1936.
4. Section 27AA(1) of the ITAA 1936.

Super SPLITTING

Sharing the deductible amount after a super split: TD 2006/34

Stephen Bourke
SUPERSPLITTING PTY LTD

Main point

This column discusses the apportionment of the deductible amount when a superannuation interest in the payment phase is split by the Family Court. The apportionment will typically follow the percentage split but there are problems when the member re-partners.

With the advent of simpler super, there will still be a need to apportion the elements of an eligible termination payment (ETP) and the deductible amount following the split of a superannuation interest under the *Family Law Act 1975* (Cth) (FLA). The apportionment of the elements of an ETP where the split occurs in the growth phase is governed by s 27ACA and s 27ACB of the *Income Tax Assessment Act 1936* (Cth) (ITAA 1936). However, the sharing of the deductible amount where the split occurs in the payment phase has not been the subject of legislative amendment. Rather, that apportionment is governed by the exercise of the Commissioner's discretion under s 27H(3) of ITAA 1936 and that discretion is the subject of a 2006 Tax Determination.

The application of TD 2006/34

TD 2006/34 governs the splitting of the deductible amount when a superannuation pension or annuity is split pursuant to a court order or a superannuation agreement under the FLA. The TD was released on 24 May 2006 but has effect from 29 June 2005 on the basis that changes were made to ss 140M(1A) and (1C) by the *Tax Laws Amendment (2005 Measures No 2) Act 2005* (Cth) so that those provisions apply to payment splits with respect to eligible annuities. Those amendments commenced on 29 June 2005 and the TD also has effect from that date.

The scheme under s 27H of the ITAA 1936 provides that where a pension or annuity is being paid to a taxpayer, the pension or annuity is included in the assessable income of the taxpayer. However, s 27H also provides that the deductible amount is excluded from assessable income. The deductible amount of pension is the amount calculated in accordance with the formula in s 27H(2). The formula calculates the deductible amount by dividing that part of the purchase price of the pension that has not attracted a tax deduction (the undeducted purchase price (UPP)) by the 'relevant number'. Put simply, it amortises the UPP over life expectancy.

Where a pension is a fixed-term pension and is therefore payable for a specific number of years, the relevant number equals that specific number of years. However, where the pension is a lifetime pension and payable for the lifetime of the pensioner, the relevant number is the number of years of the life expectancy of that person. A further qualification applies where there is a reversionary beneficiary and the life expectancy of the reversionary beneficiary is longer than the life expectancy of the pensioner. In this case, the relevant number is the number of years of the life expectancy of the reversionary beneficiary.

Where pension falls outside these conditions, the method for calculating the relevant number may be inappropriate and the legislature has provided a discretion in s 27H(3) of the ITAA 1936 for the Commissioner to calculate the relevant number. The Commissioner is to exercise the discretion to obtain an amount of the pension or annuity that, in the opinion of the Commissioner, represents the undeducted purchase price of the pension having regard to:

- the terms and conditions of the pension;
- any certificates of an actuary stating the extent to which in the opinion of the actuary the amount of the pension derived by the taxpayer in the year of income represents the undeducted purchase price; and
- such other matters as the Commissioner considers relevant.

The release of TD 2006/34 was in response to what would have been an inappropriate outcome by reason of the splitting of a pension or annuity under a court order or agreement in accordance with Pt VIIIB of the FLA. Part VIIIB provides for a court exercising jurisdiction under the FLA or the parties by way of superannuation agreement to split payments of superannuation following marriage breakdown.

The splitting of an income stream under the FLA

The strict legal position following the splitting of a pension in accordance with Pt VIIIB of the *Family Law Act 1975* (Cth) is the commencement of a new superannuation pension to the member (see s 140M(1C)(g) of the ITAA 1936) and a new superannuation pension to the non-member (see s 140M(1A)(e)). The two new pensions, which commence to be paid after the splitting order, have not been purchased. On this basis, there is an argument that the deductible amount for both pensions is nil.

The definition of 'undeducted purchase price' (UPP) in s 27A(1) of the ITAA 1936 refers to the 'purchase price of the pension or annuity'. 'Purchase price' is defined in s 27A(1) as:

> (a) in relation to a superannuation pension — the sum of:
> (i) contributions made by any person to a superannuation fund to obtain superannuation benefits; and
> (ii) so much as the Commissioner considers reasonable of contributions made by any person to a superannuation fund to obtain superannuation benefits including the superannuation pension.

Because the pensions which commence to be paid following the court order or agreement do not have contributions (as defined), it is arguable that they do not have a 'purchase price'. There may have been contributions paid by the member to the original pension but the member and the non-member are now each in receipt of a new pension by virtue of s 140M of the ITAA 1936 and there are no contributions that have been made by 'any person to a superannuation fund to obtain [those] superannuation benefits'. Hence there is no purchase price for either of the two new deemed pensions and the deductible amount would be nil.

This outcome arises because of the

wording of s 140M of the ITAA 1936. It is clearly inequitable. It is also inequitable to allocate the entire UPP to the member spouse because this would result in the member spouse becoming entitled to the full deductible amount as calculated for the original pension. The non-member spouse would be entitled to a nil deductible amount. It is also not consistent with the apportioning of undeducted contributions under s 27ACA where the order or agreement is made during the growth phase. Section 27ACA allocates undeducted contributions (and other elements of an eligible termination payment) on the same proportional basis that applies under the order or agreement under the FLA.

The legislative intent contained in s 27H is to apportion the undeducted purchase price of a pension or annuity over the likely term of the pension payments, whether fixed term or lifetime. The release of TD 2006/34 signals that it is the opinion of the Commissioner that using either a nil UPP for each new pension or allocating the entire UPP to the member spouse in applying the formula in s 27H(2) would produce an inappropriate result. Hence, the release of TD 2006/34.

The methods to calculate the deductible amount under TD 2006/34

The Commissioner's discretion under s 27H(3), exercised in accordance with TD 2006/34, has the following two methods.

1. The first method is described in para 3 of TD 2006/34. It provides that the where the relevant number in the formula in s 27H(2) is still appropriate, the method is simply to split the deductible amount calculated in relation to the original pension between the member spouse and the non-member spouse. The circumstances where the relevant number in the formula s 27H(2) is still appropriate follow.
   - Where the pension does not revert to another person who is not the non-member spouse, if the reversion is to the non-member spouse, the relevant number in s 27H(2) of the ITAA would still be appropriate because the relevant number would have been worked out in relation to the life expectancies of that member and non-member. It certainly applies where the pension is a non-reversionary pension. The following example is provided in the TD to illustrate:

     > Rex commenced a lifetime non-reversionary superannuation pension on 1 July 2000 when he was 60. The UPP was $20,000 and there was no residual capital value. The relevant number was 20.05. The deductible amount of the pension each year was $998. Rex and Martha divorce and as the rules of the superannuation fund do not allow the pension to be commuted they agree to split the pension payments effective from 1 July 2004. Under the terms of the superannuation agreement Martha (the non-member spouse) is to receive 45 per cent of each pension payment and Rex (the member spouse) is to receive 55 per cent of each pension payment. The deductible amount of Martha's new pension is:
     >
     > Original DA x NMS per cent
     > = $998 x 45 per cent
     > = $449
     >
     > The deductible amount of Rex's new pension is:
     >
     > Original DA – DA NMS
     > = $998 – $449
     > = $549

   - Where the pension is a fixed-term pension payable for a term of years certain, the relevant number will also not change and the method in para 3 of TD 2006/34 applies.
2. The second method is described in para 6 of TD 2006/34. The circumstances set out in para 6 of the TD apply where the relevant number for the original pension is no longer appropriate. It is suggested in the TD that this will arise where the terms and conditions of the pension change as a consequence of the marriage breakdown; and this is most likely to occur where the original pension was reversionary and, following the marriage breakdown, the pension ceases to be reversionary.

The most likely circumstance is where the relevant number was originally worked out using the life expectancies of the member and non-member. However, once the split occurs, the non-member is no longer the reversionary beneficiary. Where the non-member has a longer life expectancy than the member, the relevant number for the original pension will have been worked out using that life expectancy. However, following the split, the member may or may not have a new spouse who is entitled to the reversion. Where the member does not have a new spouse and the relevant number was worked out on the basis of the life expectancy of the former spouse (now the non-member), the pension should be calculated on the basis of the life expectancy of the member. This is illustrated by the following example in the TD.

> Luke commenced a superannuation pension payable for life on 1 July 1999. He is the member spouse (MS). Under the governing rules of the fund, the pension reverts to Luke's wife on his death. Luke was 55 when he commenced the pension and his wife, Angela was 50. The UPP was $100,000 and residual capital value was $0. The relevant number reflecting Angela's life expectancy was 32.32. The deductible amount of the pension was $3094. Luke and Angela divorce and as the rules of the fund do not allow the pension to be commuted they agree to split the pension payments effective from 1 July 2004. Under the terms of the superannuation agreement Angela is to receive 60 per cent of each pension

The legislative intent contained in s 27H is to apportion the undeducted purchase price of a pension or annuity over the likely term of the pension payments, whether fixed term or lifetime.

payment and Luke is to receive 40 per cent of each pension payment. Angela is the non-member spouse (NMS). However, under the governing rules of the fund the pension will no longer revert to Angela on Luke's death because of the divorce. Hence the existing relevant number based on Angela's life expectancy is no longer appropriate. The life expectation factor to be used as the relevant number is that for Luke as at the commencement day of the original pension which is 23.13. The deductible amount of Angela's new pension is:

Recalculated DA = ($100,000 – 0)/23.13
= $4,323

DA NMS (Angela) = Recalculated deductible amount x NMS per cent
= $4,323 x 60 per cent
= $2,593

The deductible amount of Luke's new pension is:

DA MS (Luke) = Recalculated DA – DA NMS
= $4,323 – $2,593
= $1,730

However, there are some circumstances that are not covered by the TD. The first circumstance is where the member has a new spouse at the time the order or agreement is made and that spouse is entitled to the reversion. The method in para 6 of the TD arguably applies but using the life expectancy of the new spouse. Remember the split has come about by reason of marriage breakdown and it is likely there is a new partner on the scene. The second circumstance is where the member later re-partners with a spouse who is entitled to the reversion.

One of the other shortfalls of the TD is that it only applies to orders made on a specified percentage basis in accordance with s 90MT and agreements made in accordance with s 90MJ. Orders and agreements made under these provisions on a specified percentage basis are orders made under s 90MT(1)(b) or agreements made under s 90MJ(1)(c)(iii). The drafter of the determination has not been precise in the quotation of the statutory provision giving rise to a lack of clarity.

The determination can only apply to orders made under s 90MT(1)(b) or agreements made under s 90MJ(1)(c)(iii) because these are the only provisions which require the specification of a percentage. The alternative means of splitting by way of base amount operates in a quite different manner. For the determination to apply to orders or agreements where there is an allocation of a base amount, the determination should expressly state it does so apply. It does not. This is curious and it may be that the Australian Taxation Office (ATO) does not have a complete understanding of the operation of the super-splitting amendments under the FLA.

Summary

Where a fixed-term or life pension or annuity the subject of an order or agreement for the splitting of superannuation, the deductible amount will be apportioned between the parties in accordance with TD 2006/34. However, where TD 2006/34 is not applicable, the deductible amount can only be ascertained by way of a private ruling. There are three circumstances where this may be warranted:

(1) where the member has re-partnered at the time of the splitting order or agreement;
(2) where the member has not re-partnered at the time of the splitting order or agreement but later re-partners; and
(3) where the split is a payment phase split by reference to a base amount rather than a specified percentage.

Family Law will continue to keep simpler super complex. ●

Stephen Bourke, Principal, SuperSplitting Pty Ltd, a consulting practice to other lawyers, accountants and financial planners, <*Stephen.Bourke@superpslitting.com.au*>.

Federal legislation update

The Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007

This Act was introduced to Parliament on 6 December 2006, to give effect to the federal government's announcements in September 2005 and July 2006 to amend the current bankruptcy laws in relation to superannuation.

It received Royal Assent on 15 April 2007.

The Act amends the:

- *Bankruptcy Act 1966* and *Payment Systems and Netting Act 1998* to provide for the recovery of superannuation contributions made with the intention to defeat creditors; and
- *Bankruptcy Act 1966* and *Proceeds of Crime Act 2002* to:
  - — provide for certain rural support grants to be exempt from the property available to pay the bankrupt's creditors; and
  - — make minor technical amendments in relation to the operation of the Act.

Two types of contributions are potentially recoverable by a trustee in bankruptcy:

- personal contributions made for a person who later becomes a bankrupt; and
- contributions made by a third party for the benefit of a person who later becomes a bankrupt.

In order for a trustee in bankruptcy to recover contributions, all of the following conditions must be satisfied:

- a contribution is made to a regulated superannuation fund, an approved deposit fund, an retirement savings account (RSA) or a public sector superannuation scheme;

- the contribution was made on or after 28 July 2006;
- the amount would probably have become part of the bankrupt's estate or would probably have been available to creditors if it had not been contributed;
- the main purpose in making the contribution was:
  - — to prevent the amount becoming divisible among the bankrupt's creditors; or
  - — to hinder or delay the process of making property (including the amount contributed) available for division amongst the bankrupt's creditors.

This condition will be satisfied if it can be reasonably inferred from all the circumstances that, at the time the contribution was made, the person was, or was about to become, insolvent. Other considerations will include whether the contribution was out of character in relation to previous contributions made.

Recoverable contributions will be net of:

- any fees or charges in respect of the contribution; and
- any tax deducted in respect of the contribution.

The trustee of a bankrupt's estate may take action with respect to a contribution at any time, by serving a notice on the fund trustee.

Superannuation accounts may be frozen for up to 180 days pending the taking of recovery action. This is done via a 'superannuation account-freezing notice'. While a member's account is subject to a superannuation account-freezing notice, the fund trustee may only cash or rollover the benefit to:

- give effect to a 'payment split' under the 'family law and superannuation' laws;
- charge costs against the superannuation interest; or
- comply with a notice or court order under various provisions of the *Bankruptcy Act*.

A member who wishes to deal with their superannuation interest while it is subject to a superannuation account-freezing notice may apply to the Official Receiver for the cashing, debiting, roll-over or transfer (in whole or in part) of their superannuation interest to be allowed. If the Official Receiver accepts the member's application, the Official Receiver will give written notice to the fund, allowing the fund to deal with the member's superannuation interest as requested. However, prior to doing so, the Official Receiver must consult the trustee of the bankrupt's estate.

If the trustee in bankruptcy forms the view that a fund trustee has breached, or is proposing to breach, a superannuation account-freezing notice, it may seek court orders against the fund trustee, including orders:

- directing the trustee of the plan to comply with that notice; or
- directing the trustee of the plan to pay to the trustee of the relevant bankrupt's estate an amount not exceeding the value of the recoverable contributions.

A fund trustee is protected from any civil or criminal proceedings that may arise because of anything done (or not done) by the fund trustee in good faith in compliance with a superannuation account-freezing notice, or another notice or court order given under the new *Bankruptcy Act* provisions.

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The following 11 Acts relate to the 'Simplified Superannuation' reforms

Income Tax Amendment Bill 2007

Further to the simplified superannuation taxation law framework introduced by the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and five related Bills, and as part of a package of five further Bills, this Act makes consequential amendments to the *Income Tax Act 1986.*

Assent: 15 March 2007

Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007

Further to the simplified superannuation taxation law framework introduced by the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and five related Bills, and as part of a package of five further Bills, this Act makes consequential amendments to the *Income Tax (Former Complying Superannuation Funds) Act 1994* in relation to the imposition of tax on certain superannuation funds.

Assent: 15 March 2007

Income Tax (Former Non-resident Superannuation Funds) Amendment Bill 2007

Further to the simplified superannuation taxation law framework introduced by the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and five related Bills, and as part of a package of five further Bills, the Act makes consequential amendments to the *Income Tax (Former Non-resident Superannuation Funds) Act 1994* in relation to the imposition of tax on certain superannuation funds.

Assent: 15 March 2007

Income Tax Rates Amendment (Superannuation) Bill 2007

Further to the simplified superannuation taxation law framework introduced by the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and five related Bills, and as part of a package of five further Bills, this Act makes consequential amendments to the *Income Tax Rates Act 1986.*

Assent: 15 March 2007

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Superannuation (Departing Australia Superannuation Payments Tax) Act 2007)

Part of a package of six Bills in relation to reform of the superannuation system, this Act realigns the tax treatment of superannuation payments for persons departing Australia with the new superannuation taxation regime.

Assent: 15 March 2007

Superannuation (Excess Concessional Contributions Tax) Act 2007

Part of a package of six Bills in relation to reform of the superannuation system, this Act imposes excess concessional contributions tax to give effect to the limit on concessional contributions to superannuation.

Assent: 15 March 2007

Superannuation (Excess Non-concessional Contributions Tax) Act 2007

Part of a package of six Bills in relation to reform of the superannuation system, this Act imposes excess non-concessional contributions tax to give effect to the limit on non-concessional contributions to superannuation.

Assent: 15 March 2007

Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007

Part of a package of six Bills in relation to reform of the superannuation system, the Bill imposes the top marginal tax rate (plus Medicare levy) on lump sum payments in excess of $1 million made from untaxed superannuation schemes.

Assent: 15 March 2007

Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Act 2007

Part of a package of six Bills in relation to reform of the superannuation system, this Act amends the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* to repeal the current penalty for the late lodgment of a self-managed superannuation fund's regulatory return, enabling a single annual return to be lodged covering both the supervisory levy and income tax liability.

Assent: 15 March 2007

Superannuation Legislation Amendment (Simplification) Bill 2007

Further to the simplified superannuation taxation law system introduced by the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and five related Bills, and as part of a package of five further Bills, this Act makes consequential and other amendments in relation to superannuation taxation to 26 Acts, including the repeal of the old superannuation taxation law (such as reasonable benefits limits and taxation of eligible termination payments) in the *Income Tax Assessment Act 1936*. It also repeals the *Income Tax (Superannuation Payments Withholding Tax) Act 2002*.

Assent: 15 March 2007

Tax Laws Amendment (Simplified Superannuation) Act 2007

Part of a package of six Bills in relation to reform of the superannuation system, this Act amends the taxation and superannuation laws to implement a simplified and streamlined superannuation system; and rewrite and consolidate superannuation taxation law into the *Income Tax Assessment Act 1997*. The Act also enables Australians aged 60 or over to access their superannuation benefits tax free if they are paid from a taxed superannuation fund.

Assent: 15 March 2007 ●

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COMMISSIONING EDITOR: Virginia Ginnane BA/LLB **MANAGING EDITOR: Bruce Mills PRODUCTION: Christian Harimanow**
SUBSCRIPTIONS INCLUDE: 10 issues plus binder SYDNEY OFFICE: Locked Bag 2222, Chatswood Delivery Centre NSW 2067 Australia
TELEPHONE: (02) 9422 2222 FACSIMILE: (02) 9422 2404 DX 29590 Chatswood www.lexisnexis.com.au virginia.ginnane@lexisnexis.com.au

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