

CHAPTER 9 : AMENDMENTS PUT TO THE COMMITTEE BY ORGANISATIONS AND INDIVIDUALS

Social Security Legislation Amendment Bill (No 3) 1992 Divisions 16-19 (inclusive)

9.1 AM Corporation, on behalf of five providers of allocated pensions, made the following recommendations:

- that the current rules of allowing flexible commutation be continued. As long as the minimum pension is paid each year, individuals should have the right to elect to receive lump sum commutation. For administrative simplicity, such commutation should be limited to a minimum of, say, ten per cent of the remaining account balance (with corresponding adjustment to the Deductible Amount) and, say, one commutation per year; and
- that the proposed new treatment of allocated pensions should be held over until a full review of annuities and pensions be undertaken for consistent treatment¹

The following proposed Social Security amendments were presented by AM Corporation to the Committee:

"INCOME" TEST

1. Bill

Allocated pensions and annuities to be treated as "managed investments" from 25 March 1993 (subject to transitional rules)

Amendments

Amend Bill to exclude allocated pensions and annuities from managed investments definition, but only if they comply with the proviso to the *revised* allocated pension/annuity definition. Those that do not comply will be treated as per Bill

¹ ST sub nos 15 and 17.

2. Act

Annuities that are "roll-over annuities" qualify for a greater exclusion for income test purposes than pensions and other annuities via a modified definition of "deductible amount". (No change to this in the Bill.)

"ASSETS" TEST

1. Bill

Act currently excludes the value of superannuation pensions from the assets test. The Bill limits the exclusion so that it does not apply to a superannuation pension that is an allocated pension.

2. Bill

The Act contains a special provision for valuing annuities. The Bill proposes that this should not apply to *allocated* annuities.

Amendments

Amend Bill so that treatment for "Roll-over Annuities" is extended to "Roll-over Allocated Pensions", being superannuation pensions that are allocated pensions (as per the *revised* definition) purchased with rolled-over amounts.

Amendments

(No change to this, other than *revised* allocated pension definition.)

Amendments

Amend Bill so that the annuity valuation provisions apply to superannuation pensions that are allocated pensions and so that allocated annuities are *not* excluded from the annuity valuation provisions. (Note *revised* definition of allocated pensions and annuities.)

DRAFT AMENDMENTS TO THE SOCIAL SECURITY LEGISLATION AMENDMENT (NO 3) BILL 1992

Brief Explanation of the Amendments

1. The amendments introduce a revised definition of what is an *allocated* pension or an *allocated* annuity. See amendment numbered (2).
2. The amendments exclude allocated pensions and allocated annuities that comply with the new definition from the definition of "managed investments" to be introduced from 25 March 1993 (and from the transitional rules to apply for the period to 25 March 1993). This will have the result that the income actually received under the allocated pensions or annuities will be treated as income for the income test, rather than the "deemed" earnings under the special rules for managed investments. Allocated pensions and annuities that do not comply with the new definition will be included as managed investments from 25 March 1993 and will be subject to the transitional rules. See amendments numbered (1) and (3).

3. The amendments modify the definitions relevant to the exclusion of the "deductible amount" for income test purposes to extend the treatment for roll-over annuities to "roll-over allocated pensions". A roll-over allocated pension is defined as a superannuation pension that is an allocated pension (as defined) purchased with roll-over amounts. See amendment numbered (2).
4. In relation to the inclusion of the value of allocated pensions and annuities for the purposes of the assets test, allocated superannuation pensions and allocated annuities are to be valued in accordance with the "Annuity Value Calculator" set out at the end of section 1119 for consistency with the treatment of other annuities. see amendment numbered (4).

Text of the Amendments

Clause 113

- (1) Clause 113, paragraph (b):
 - (a) delete paragraph (g) from subsection (1B) and substitute the following paragraph (g):

"(g) a pension or annuity which does not meet the requirements set out in either of paragraphs (a) or (b) of the definition of an allocated pension or annuity set out in section 9(8), but which would otherwise be an allocated pension or an allocated annuity."
 - (b) delete the words "that is not an allocated annuity" from paragraph (f) of subsection (1C) and substitute the words "other than an annuity of the kind described in section 9(1B)(g)";
 - (c) delete the words "that is not an allocated pension" from paragraph (g) of subsection (1C) and substitute the words "other than a pension of the kind described in section 9(1B)(g)"; and

Clause 137

- (2) Clause 137, omit paragraph (b), insert the following new paragraphs (b) – (g) (inclusive);
 - "(b) by inserting immediately after the words "an annuity" in the definitions of "purchase price", "relevant number" and "residual capital value" in subsection (1) the words "or a superannuation pension that is an allocated pension";
 - (c) by adding at the end the following subsection:

"(8) A pension or annuity is an allocated one if the provider of the pension maintains an account in respect of the pensioner or annuitant to which is credited earnings that relate to the

amount in the account and to which is debited annuity instalments or pension instalments that are paid to the pensioner or annuitant **PROVIDED THAT:**

- (a) the rate of payment may only be varied once in any period of 12 consecutive months; and
 - (b) in the case of an allocated pension payable from a superannuation fund, the superannuation fund must have been a "complying superannuation fund" for the purposes of the Income Tax Assessment Act 1936 when the pension commenced to be paid."
- (d) in the definition of "non-assessable purchase price" in subsection (1), by inserting the words "or a roll-over allocated pension" immediately after the words "roll-over immediate annuity" in paragraph (b) and by inserting the words "other than a roll-over allocated pension" immediately after the words "a superannuation pension" in paragraph (c);
- (e) in the definition of "purchase price" in subsection (1), by inserting the words "or a superannuation pension" immediately after the words "an annuity";
- (f) by inserting the following definition in subsection (1):
- "roll-over allocated pension" means a superannuation pension that is an allocated pension, the purchase price of which consists wholly of a rolled-over amount or rolled-over amounts;"
- (g) by deleting the definition of "roll-over purchase price" from subsection (1) and substituting the following definition of "roll-over purchase price":

"roll-over purchase price" in relation to a roll-over immediate annuity or a roll-over allocated pension means:

- (a) except where paragraph (b) applies – either the sum of the following amounts:
 - (i) the amount that would, under Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act*, be the undeducted purchase price of the annuity or superannuation pension;
 - (ii) the amount that is the upper limit under section 159SG of the *Income Tax Assessment Act* for the year of income in which the annuity or superannuation pension was purchased;

or the purchase price of the annuity or superannuation pension, whichever is less; or

(b) where:

- (i) more than one roll-over immediate annuity or roll-over allocated pension have been purchased using the same rolled-over amount or rolled-over amounts in the name of the same person or where both a roll-over immediate annuity and a roll-over allocated pension (or more than one of either or both) have been purchased using the same rolled-over amount or rolled-over amounts in the name of the same person; and
- (ii) the roll-over purchase price of any other roll-over immediate annuity or roll-over allocated pension has previously been worked out under paragraph (a) for the purposes of this Act;

the amount that would, under Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act*, be the undeducted purchase price of the annuity or superannuation pension;

Clause 138

- (3) Delete the words "allocated annuity or allocated pension" from section 1099A(1) and substitute the words "an annuity or a pension which does not meet the requirements set out in either of paragraphs (a) or (b) of the definition of an allocated annuity or pension set out in section 9(8), but which would otherwise be an allocated annuity or an allocated pension."

Clause 140

- (4) Omit the clause, insert the following new clause:

140. Sections 1119 and 1120 are repealed and the following sections are substituted:

"Value of annuities and allocated pensions

- 1119. (1) Subject to subsection (2), in calculating the value of a person's assets for the purposes of this Act (other than subparagraph 263(1)(c)(iv) and sections 1125 and 1126), disregard the value of any annuity of the person.
- (2) Subsection (1) does not apply to:
 - (a) a disposable or deferrable annuity; or

- (b) an immediate annuity purchased on or after 15 August 1989; or
- (c) an annuity that became presently payable on or after 15 August 1989.

Disposable or deferrable annuity

- (3) For the purposes of subsection (2), an annuity is a **disposable or deferrable annuity** if:
 - (a) either:
 - (i) the annuity is able to be disposed of; or
 - (ii) a substantial part of the income under the annuity is deferred; or
 - (iii) a substantial part of the income under the annuity may be deferred; and
 - (b) the Secretary is satisfied that the annuity should not be disregarded under paragraph 1118(1)(e).

Value of allocated pensions and certain post-15 August 1989 annuities

- (4) The value of:
 - (a) an immediate annuity (including an immediate annuity that is an allocated annuity) purchased on or after 15 August 1989; or
 - (b) an annuity (including an annuity that is an allocated annuity), that became presently payable on or after 15 August 1989; or
 - (c) a superannuation pension that is an allocated pension;
 is worked out using the Annuity Value Calculator at the end of this section.

ANNUITY VALUE CALCULATOR

Overall value calculation

1119-1. This is how to work out the value of the annuity or pension:

Method statement

- Step 1.* Work out the residual capital value of the annuity or pension;
- Step 2.* Work out the balance of the purchase price of the annuity or pension using pint 1119-2.
- Step 3.* Work out the adjustment factor using point 1119-3.
- Step 4.* Multiply the balance obtained under Step 2 by the adjustment factor obtained in Step 3: the result is called the adjusted balance.
- Step 5.* Add the adjusted balance to the residual capital value: the result is called the adjusted value of the annuity or pension;
- Step 6.* the value of the annuity or pension is the higher of the adjusted value and the residual capital value.

Note: for "residual capital value" see subsection 9(1).

Balance of purchase price

1119-2 The balance of the purchase price of the annuity or pension is:

$$\text{purchase price} - \text{residual capital value}$$

Note: for "purchase price" and "residual capital value" see subsection 9(1).

Adjustment factor

1119-3. The adjustment factor is:

$$\frac{\text{relevant number} - (\text{years elapsed} + 1)}{\text{relevant number}}$$

where:

relevant number is the relevant number for the annuity or pension;

years elapsed is the number of full years that have elapsed since the annuity or pension became presently payable.

Note: for "relevant number" see subsection 9(1).

Value of annuity or allocated pension – change of relevant number

1120. (1) If:

- (a) a determination of entitlement is made in relation to a person; and

- (b) the determination is made having regard to a relevant number for an annuity or a superannuation pension that is an allocated pension; and
- (c) the number was determined as mentioned in paragraph (c) of the definition of "relevant number" in section 27H of the *Incomes Tax Assessment Act*; and
- (d) the person appeals against the determination of the relevant number; and
- (e) on appeal, a lower number is substituted for the original relevant number;

the Secretary must make a new determination of entitlement in relation to the person.

- (2) In making a new determination under subsection (1), the Secretary must have regard to the lower relevant number for the annuity or allocated pension concerned.
- (3) If the Secretary makes a new determination of entitlement in relation to a person under subsection (1), there is payable to the person the amount worked out using the formula:

$$\text{new amount} - \text{actual amount}$$

where:

new amount is the amount of pension, benefit or allowance that would have been payable to the person for the underpayment period at the new rate determined under subsection (1);

actual amount is the amount of pension, benefit or allowance that is paid to the person for the underpayment period;

underpayment period is the period that:

- (a) starts either:
 - (i) if the appeal concerned is instituted within three months after the person is notified of the original determination of the relevant number – when that determination is made; or
 - (ii) in any other case – when the appeal is instituted; and
- (b) ends when the new determination of entitlement takes effect.

9.2 **Equity Life Limited** recommended that 'with profit' annuities be treated in the same manner as allocated pensions and that a review of the proposed changes be undertaken.

Taxation Laws Amendment (Superannuation) Bill 1992

9.3 Association of Superannuation Funds of Australia Limited (ASFA)

ASFA submitted details of its Council resolution regarding the need for greater equity in taxation arrangements. Its goal, in order of priority, should be to:

- (i) lift the rebate to, say, 20 per cent;
- (ii) lift the maximum qualifying contribution to, say, five per cent of AWE (approximately \$1 500); and
- (iii) lift the income cut-off point to, say, 150 per cent of AWE (approximately \$45 000)²

9.4 Life Insurance Federation of Australia (LIFA)

- LIFA recommended that the taxation rebates on superannuation be changed as follows in order of priority:
 - (i) increase the \$1 000 limit to \$2 000;
 - (ii) increase the ten per cent rebate to 20 per cent; and
 - (iii) increase the \$27 000 salary threshold to \$35 000.
- In the event of rebates not being improved for all, a phased reduction for those who made deductible or rebatable contributions in 1991-92 should be allowed.³

9.5 Australian Council of Social Service (ACOSS)

- ACOSS submitted that changes be made to bring about the:
 - abolition of the current special tax concessions for contributions and fund earnings;

² ST sub no 21.

³ ST sub no 16.

- assessment of taxable contributions and fund earnings as part of the individual members' taxable income, with tax on superannuation component paid by the fund;
- provision of a uniform tax rebate, which could be offset against taxes paid by the fund in respect of contributions and fund earnings for each member; and
- abolition or substantial reduction of taxes on benefits, except for lump sums above \$75 000 (indexed annually) and benefits withdrawn before age 60 (except in cases of hardship involving persons over 50 years of age)

The rebate could be calculated either on an annual or a life-time basis. An annual rebate could allow for a higher level of contributions for older workers with limited superannuation.

The rebate could be calculated either as a flat amount or as a percentage of taxable contributions and earnings up to a maximum level. This percentage should be no less than the lowest marginal rate of personal income tax.

9.6 ACOSS further submits that if the above proposal is not adopted, another option would involve:

- abolition of the current concessions for contributions;
- taxation of employer contributions at marginal rates and providing a uniform rebate to offset employer and personal contributions in full or in part; and
- fixing the RBLs at much lower levels than proposed.

9.7 **Captain C J Kaye** submitted the following amendments:

1. Any taxpayer who has a lump sum in excess of \$400 000 RBL, or the \$800 000 pension RBL on 30 June 1994, be permitted to have that sum transferred to a capital account under separate ADF or superannuation rules.
2. Any earnings, be it interest, dividends or rental, together with any future employer award payments, be paid into a separate and new fund from which, on retirement, only a pension can be paid.
3. That the value of the capital account be allowed to increase (or decrease) by the change in asset value of the account without attracting a penalty rate of the top marginal rate on withdrawal on retirement.
4. That mix of assets within the account be allowed to be varied as the fund managers see fit.

5. That these arrangements be permitted to continue after retirement, provided that both the capital account and the account for receiving earnings and paying a pension are BOTH transferred to an ADF under rules similar to pre-February 1990.⁴

9.8 **The Institute of Actuaries** submitted that the following amendments be made:

- ◆ in relation to the 1.7.94 simpler age-related maximum contribution rates, the Institute recommends that some discretion be allowed for defined benefits funds, for example, after a significant reduction in membership, a fund may need extra contributions to secure remaining benefits; and
- ◆ more significant tax offsets for member contributions are needed.

⁴ Sub no ST 20, p 3