

CHAPTER 7 : TAXATION OF FUND INCOME

7.1 This chapter examines the taxation of contributions from their entry to a fund to their exit. This includes an overview of the current arrangements for taxing complying and non-complying superannuation funds, complying and non-complying Approved Deposit Funds (ADFs) and Pooled Superannuation Trusts (PSTs). Evidence presented to the Committee is examined and suggestions for possible reform canvassed. The Taxation Laws Amendment (Superannuation) Bill 1992 does not directly impact on this phase of superannuation.

Current Arrangements

Contributions Tax

7.2 The 15 per cent contributions tax was introduced in the May 1988 Economic Statement. Until then, superannuation had been taxed at only one stage – a 30 per cent tax on end benefits. The then Treasurer explained the tax as being a temporal adjustment – bringing forward tax revenue that would have been collected some years later:

... it will allow the Government to bring forward nearly \$1 billion of its own tax money – now lying in superannuation funds – without diminishing end benefits by one cent.¹

7.3 It is not strictly correct to differentiate between a fund earnings tax and a contributions tax. The reforms in 1988 merely brought 'deductible contributions' into the assessable income of a fund. There is no requirement for a fund to immediately deduct 15 per cent tax from contributions upon receipt. A fund has the option of waiting until the end of the income year and then paying 15 per cent tax on the contributions plus investment earnings less deductions, rebates and credits. The Committee notes that the timing of notional tax adjustments to member accounts may affect the earnings on contributions. The system which would best meet the criteria of equity and simplicity would involve all fund members having the contributions tax deducted at a uniform juncture.

¹ Paul Keating *Economic Statement*, May 1988, AGPS Canberra, p 14

7.4 The amounts that are taxable contributions are essentially those for which the contributor (whether member or employer) has received an income tax deduction. It is important to note that contributions for which a member received a rebate are not subject to the 15 per cent contributions tax. Also, all member contributions must be treated as taxable unless various notices are given to the fund in respect of the member.

7.5 Members who are not entitled to, or choose not to, claim a deduction for their contributions should give a section 82AAT(1A) notice to the trustee of the fund so indicating. In the case of an employer sponsored fund, the employer may give a section 274(4) notice to indicate that fund members are not entitled to an income tax deduction for their contributions.² Where such notices are given, the relevant contributions are not subject to the 15 per cent contributions tax.³

7.6 Where a complying superannuation fund or complying ADF has investments in a life insurance company, a registered organisation or a PST, the fund may transfer the tax liability on its taxable contributions to the other body.⁴ This provision is largely for the benefit of smaller funds who are wholly managed by a life assurance company or PST. It is administratively easier for the fund to be able to transfer its liability to the other body.

7.7 Where a complying superannuation fund was 'underfunded' at 30 June 1988, contributions paid to it to cover that 'shortfall' can be excluded from assessable income by the application of pre-1 July 1988 Funding Credits. A complex formula is laid down in the ITAA indicating the extent of these Funding Credits.⁵

7.8 Chart 7.1 shows the relationship between the 'contributions' tax and the tax incentives outlined in Chapter 6 of this report.

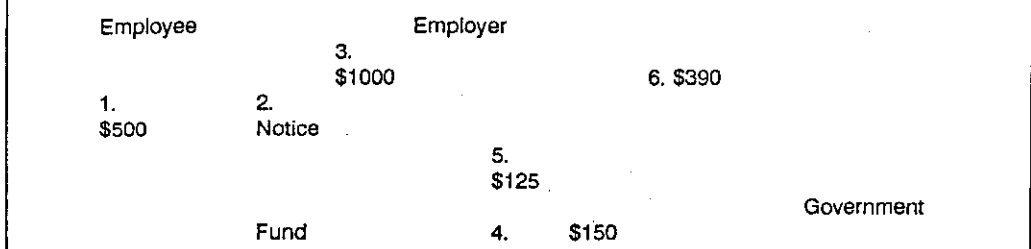
² PAYE deductions can also be varied to reflect tax concessions, (see Appendix I)

³ Section 274(2)

⁴ Section 275

⁵ Sections 275A, 275B

Chart 7.1
The flow of wealth and paper.



Notes

1. Employee contributions of \$500, for which the employee is entitled to a rebate of 25 per cent
2. Section 82AAT(1A) Notice from employee to fund trustee;
3. Employer contribution of \$1,000, which is to be included in the assessable income of the fund;
4. Contributions tax of \$150 to Government in respect of \$1000 employer contribution;
5. Rebate to employee of \$125 for their \$500 contribution
6. Reduction in company tax payable by employer of \$390 for their \$1000 contribution on behalf of employee.

Taxation of Earnings

7.9 The 15 per cent tax on fund earnings was introduced in the May 1988 Economic Statement. The then Treasurer announced that the intent was to bring superannuation funds within the full ambit of the imputation system, giving them access to dividend tax credits.⁶ Prior to the introduction of this measure, superannuation funds could not fully share in the profits of Australia's major corporations and, as such, Australia's public companies were being denied the full investment support of the nation's superannuation funds.⁷

7.10 As far as the earning of income and incurring of expenses goes, the law governing superannuation funds is similar to that which applies to normal businesses. There are specific exemptions for complying superannuation funds for income accruing prior to 1 July 1988⁸, income from non-reversionary bonus on life assurance policies⁹ and bonuses received on the payout of life policies.

⁶ May Economic Statement, op cit, p 14.

⁷ ibid

⁸ Section 282

⁹ Section 282A. A non reversionary bonus is generally an amount received annually by way of bonus representing the growth in value of a life assurance policy investment provided that the bonus is not actually paid over to the policy holder

7.11 An important exemption is that applying to income derived from a fund's current pension assets. There is an exemption in the Act for income derived from segregated current pension assets and an exemption of a proportion of income attributable to non-segregated current pension liabilities.

7.12 Where a fund sets aside a pool of assets for the sole purpose of enabling a fund to discharge in whole or in part its current pension liabilities, the income from those assets, including capital gains on disposal of those assets, is exempt from tax.¹⁰ Current pension liabilities are defined as those liabilities the fund has in respect of pensions currently payable. For the exemption to apply, an actuary's certificate must be obtained indicating the value of the current pension liabilities every three years. Certain arrangements apply where trustees transfer assets in and out of the segregated current pension assets portfolio.

7.13 Where a fund does not set aside segregated current pension assets, an exemption may still be available.¹¹

7.14 The exemption is broadly calculated as a proportion of the fund's normal assessable income, this proportion being:

Unsegregated Current Pension Liabilities
Unsegregated Superannuation Benefit Liabilities

7.15 An actuary's certificate must be obtained certifying the above amounts. There is provision for an interim calculation to be made where a full actuarial investigation has not been performed in a particular year.

*Capital Gains Tax (CGT)*¹²

7.16 Whilst the general CGT provisions only apply to assets acquired after 19 September 1985, CGT applies to assets of complying superannuation funds, complying ADFs and PSTs, irrespective of when they were acquired.

7.17 CGT is in essence, a tax on the disposal of an asset. The definition of asset is quite wide but there are two important exemptions for certain funds, namely: policies of life assurance; and units in a PST.

7.18 The cost base rules for assets owned by complying superannuation funds, complying ADFs and PSTs are different to those applying to other taxpayers. Where a fund disposes of an asset that it owned at 30 June 1988, regardless of

¹⁰ Section 282B

¹¹ Section 283

¹² Division 10, Part IX, ITAA

when it was acquired, the cost base of the asset is either the cost of the asset or the market value of the asset at 30 June 1988 whichever yields the lowest gain or loss. Furthermore, there are complex indexation provisions for assets owned for more than one year.

7.19 Where a State government is the trustee of a superannuation fund, it is not liable for capital gains tax on the disposal of assets held by the fund. Such trustees are, however, liable for tax on interest income earned on the property of a trust.¹³

Special and Standard Components of Taxable Income

7.20 Superannuation funds are subject to tax at the highest personal marginal rate on 'special income', essentially that income derived from non-arm's length transactions. All other fund income is known as 'standard income' and is taxed at the rate of 15 per cent.

Deductions

7.21 The ITAA provides for certain deductions which are applicable to all taxpayers. The Act also contains specific provisions in relation to superannuation funds, dealing with deductions for:

- ♦ **Death and disability benefits.** Where a complying fund offers death or disability benefits, it is entitled to a deduction for insurance policy premiums. Where such a fund self-insures it is entitled to a deduction for the arm's length cost of such a premium.
- ♦ **Benefits paid to a member's dependants.** A fund is allowed a deduction for the amount of past taxable contributions that form part of the death benefit, provided the whole benefit is passed on to the beneficiary.
- ♦ **Repatriation of surplus to employer sponsors.** Where a fund makes a payment to an employer sponsor who has been allowed a deduction for contributions to the fund, the amount paid is assessable to the employer¹⁴ and deductible to the fund¹⁵. The Government has foreshadowed its intention to remove this deduction from 1 July 1995.

¹³ Section 114 of the Commonwealth Constitution; see the recent High Court decision of *The State of South Australia & Anor v The Commonwealth of Australia & Anor* (1992) 105 CLR 171

¹⁴ Section 82AAQ

¹⁵ Section 279C

Rebates

7.22 As part of the reforms announced in the May 1988 Economic Statement, complying superannuation funds, complying ADFs and PSTs are able to take advantage of franking rebates under the imputation system. In essence, the imputation system eliminates the effective double taxation of income earned by a company. An important point to remember is that because superannuation funds pay a lower rate of tax than companies, franking rebates are proportionately of more value to superannuation funds. A fund is entitled to a franking rebate equal to the lesser of the total imputation credits relating to franked dividends received by the fund, or the total tax payable by the fund. Example 7.1 illustrates the operation of dividend imputation.

Example 7.1 : Dividend Rebate in Practice

The Ace Superannuation Fund is a complying superannuation fund which receives \$122 in fully-franked dividends in the income year. It had other assessable income of \$150. Its tax payable is as follows:

Dividend Income	122.00
Add imputation credit ($122 \times 39/61$) ¹⁶	78.00
Other assessable income	150.00
Taxable income	350.00
Tax on taxable income (15% of \$350)	52.50
Less franking rebate (lesser of imputation credit or tax payable)	<u>78.00</u>
Tax Payable	0.00

Note: Dividend rebates cannot be carried forward or backward through income years.

Taxation of Pooled Superannuation Trusts (PSTs)¹⁷

7.23 A PST is a unit trust that invests the assets of complying superannuation funds and complying ADFs. The PST is essentially an investment vehicle for these funds and is formed to enable such funds to pool their assets for investment purposes, and hence maintain a diversity of investment. To qualify as a PST, an entity must be a unit trust and meet the criteria for a PST laid down in the OSS Regulations.¹⁸ A PST must only be used for investing the assets of: a complying superannuation fund, a complying ADF, the assets of the superannuation business of a life insurance company, other PSTs and certain tax exempt entities.

¹⁶ The dividend income of \$122 must be 'grossed-up' to its before-tax value. This is done by multiplying it by 39/61 (that is, 39 represents the percentage rate of company tax, and 61 is equal to 100 less 39)

¹⁷ Division 7 part IX, ITAA

¹⁸ See generally Part IIIA, OSS Regulations

7.24 PSTs are generally subject to tax at the same concessional rates as superannuation funds and approved deposit funds. Generally, the income of a PST is not distributed to unitholders, but is reflected in an increase in the value of units. The sale of units in a PST by a unitholder is specifically exempt from capital gains tax.

7.25 Where a complying fund invests in a PST, the PST is entitled to an exemption from tax on a portion of its income, based on the average proportion of units held in the fund during the year that represent current pension assets of complying superannuation funds which are unitholders in the PST. The value of the tax exemption will generally be passed on to the relevant superannuation fund in the form of extra units of equivalent value.

Taxation of Approved Deposit Funds (ADFs)¹⁹

7.26 An ADF is a fund created to receive eligible termination payments (ETPs) where retirees wish to defer their benefit to a future time. This is achieved by the taxpayer rolling over an ETP into an ADF. No tax is paid on the ETP at the time of rollover.²⁰ ETPs rolled over into a complying ADF generate income which is taxed at the concessional rate of 15 per cent per annum. Income earned by a non-complying ADF is taxed at the highest personal marginal rate (currently 47 per cent). An ADF is assessed on income in much the same way as other taxpayers, but is subject to a number of specific provisions, for example, golden handshakes and unfunded retirement payments are included in their assessable income where the 15 per cent tax on contributions and earnings has not been paid.

Fixed Interest ADFs

7.27 An ADF is entitled to an exemption in respect of income relating to certain deposits which it held at 25 May 1988. Where the ADF derives at least 90 per cent of its income in the form of interest, and has been a continuing complying ADF since the beginning of 1 July 1988, the income which is earned on deposits which were held by the ADF at 25 May 1988 that were made by 'relevant depositors' is exempt from tax. A relevant depositor must have been either aged 55 or over at 25 May 1988 or aged 50 or over at 25 May 1988 and have previously rolled over into the ADF all or part of an ETP containing a concessional component.

¹⁹ For complying ADFs see Division 5, Part IX, ITAA and for non-complying ADFs see Division 6, Part IX, ITAA

²⁰ See Chapter 8, Taxation of Benefits

Committee's Evidence

7.28 The Committee received evidence that the method of taxing contributions and fund earnings was inequitable by virtue of its regressivity.²¹

7.29 ACOSS suggested a system which would involve:

Assessment of contributions and fund earnings as part of individuals members' taxable income; (and) provision of 'tax rebates' up to a standard limit, which could be offset against taxes paid by members on contributions and fund earnings.²²

7.30 This evidence accorded with that of the Women's Economic Think Tank who suggested that, for example, one third of women workers earn less than \$15 000 (which is where they suggest total tax payable is equal to 15 per cent of earnings).²³ Further support is evidenced by the submission of the Superannuation Economics Research Group of the University of New South Wales which suggested that:

Ideally, superannuation flows should be taxed once only at the contributor's marginal rate of income tax. This would eliminate perverse tax-induced impacts on retirement consumption, to the extent that it is financed by superannuation benefits. It would also be equitable, in the sense that the progressive marginal income tax schedule is applied to all superannuation contributions.²⁴

7.31 However, the idea of levying a contributions tax at the members marginal rate, and then applying a rebate to it, was largely rejected by industry representatives.²⁵ Such a proposal is usually raised in conjunction with a proposal for a universal rebate. As Mr Brian Scullin of ASFA noted:

It is not a matter of it being difficult or costly, but just straight out impossible. Even if we then go round and round and try to find some obtuse way, we cannot see that you are going to have anything but a marginal gain in equity at a massive loss of efficiency.²⁶

²¹ AFCO sub no 139

²² Sub no 35, p iii

²³ Sub no 126, p 8

²⁴ Sub no 150, p 9

²⁵ It should be noted that such proposals normally involve a 'notional' rebate in the sense that it does not flow back to the member but merely reduces the tax payable on contributions.

²⁶ Evidence, 22 July 92, p 2127

7.32 This stance was also supported by Mr Ken Robinson of LIFA,²⁷ Mr Iain Ross of the ACTU,²⁸ and Mr Colin Grenfell of the Institute of Actuaries.²⁹

7.33 Most comment on this section can be divided into two areas, namely, the 15 per cent 'contributions tax' and the 15 per cent 'fund earnings tax'.

Contributions Tax

7.34 The Committee notes a divergence of opinion as to whether the contributions tax should be retained. It was submitted that Australia is virtually alone in the western world in taxing superannuation contributions and investment earnings.³⁰ However, it was also conceded that to abolish the tax would have serious budgetary consequences.³¹ Those parties who advocated the removal of the fund income tax generally preferred to see taxes levied on benefits.³² Another comment in this vein was that there is considerable consumer resentment to this tax.³³ In addition, it was noted that the tax on contributions is an 'undesirable complication' and that it 'hides the true level of taxation'.³⁴

7.35 Alternatively, there were those who advocated maintaining the contributions tax as part of a package centred on abolishing or reducing the end benefit tax³⁵ or as part of a package containing greater incentives for contributions.³⁶ Alternatively, there were those who advocated reducing incentives for contributions but abolishing the contributions tax.³⁷

²⁷ Evidence, p 2126

²⁸ Evidence, p 2123

²⁹ ST Bills evidence, p 19

³⁰ AM Corporation sub no 96, p 6

³¹ *ibid*

³² Dr John Knight sub no 171, p 1; Rothschild Australia Asset Management Ltd sub no 141, p 2; Australian Friendly Societies Association sub no 136 pp 5-6; Mr Peter Griffin sub no 133, p 4; ASCPA/ICAA sub no 119, p 8

³³ Westpac Banking Corporation sub no 132, p 7; Australian Friendly Societies Association sub no 136, p 5

³⁴ Government Employees Superannuation Board (WA) sub no 84, p 4

³⁵ Alexander Consulting Group sub no 61, p 4; Noble Lowndes sub no 80, p 11

³⁶ Commonwealth Banking of Australia sub no 173, p 11; Peter J Vere Pty Ltd sub no 241, p 1

³⁷ Metway Corporation sub no 117, p 1; Australian Friendly Societies Association sub no 136, p 4

7.36 It was also noted that the differing categories of member contributor, the notice requirements and the contributions tax all combine to create an unfair, complicated and expensive regime. As a result, it was suggested that the current deductions be replaced by rebates which reflect the current contributions tax. This would allow the contributions tax to be dropped and would have the advantage of removing the obligation of trustees to remit the tax to the Government.³⁸

7.37 The problem was also brought to the attention of the Committee by the Australian Taxation Office. In short, the requirement for funds to ascertain which members will claim a tax deduction for their contributions – and the requirement for contributions to be deductible in the event of uncertainty – produces a situation where more contributions tax is paid than should be.³⁹

7.38 There was a call for the rate of 15 per cent to be changed to reflect reductions in personal income tax rates, and for this to be a continuing process.⁴⁰

Recommendation 7.1:

The Committee by majority believes that the contributions tax should be retained for 'deductible' contributions and the exemption for 'rebatable' contributions should also be maintained.

Recommendation 7.2:

The Committee believes that the contributions tax, with respect to employer contributions, should be withheld by the employer instead of the fund trustee. This would substantially reduce the administrative complexity of the current arrangements and lead to less loss of benefits through inadvertence. In other words, employer and self-employed contributions (which have been subject to the 15 per cent tax) should be excluded from the assessable income of the fund.

³⁸ Prudential sub no 43, p 3. It should be noted that the rebate reform contained in the Taxation Laws Amendment (Superannuation) Bill 1992 largely overcomes the confusion faced by trustees as to the nature of member contributions.

³⁹ ATO sub no 155, p 7

⁴⁰ LIFA sub no 114, p 41; Institute of Actuaries sub no 108, p 6; ASCPA/ICAA sub no 119, p 7

Fund Earnings Tax

7.39 Many submitters acknowledged the purpose behind taxing fund income. However, the Superannuation Economics Research Group (UNSW) focussed the Committee's attention on the deleterious impact of the taxation of fund earnings:

The impact on the accumulation at retirement can be very great, because the longer the time horizon of the investment, the more important is the power of compound interest to the accumulation. Earnings taxes can seriously threaten the goal of adequate replacement in retirement.⁴¹

7.40 LIFA, AM Corporation Ltd and the Taxation Institute of Australia expressed the view that imputation credits were insufficient to offset the full tax on income. In particular the AM Corporation noted that:

... a superannuation fund must invest up to nearly half the fund's investments in shares in order to eliminate fully the income tax. This level would generally be considered to be an unwise level of equity investment in a long term investment portfolio for an accumulation style of fund.⁴²

7.41 The ASCPA/ICAA noted that investment managers do not determine exposure to shares in their portfolios by tax breaks but by prudential considerations.⁴³ The Taxation Institute noted that this measure discourages investment by superannuation funds in new industry (as new industry is unlikely to pay franked dividends in the short term).⁴⁴ Westpac and the IFAA Ltd noted that the tax on investment income is variable due to the variable performance of markets and investment vehicles.⁴⁵ Westpac also warned that if the rate were to increase, market biases between different investments could be created.⁴⁶ The Committee notes that there is a possible conflict between this and the ASCPA/ICAA submission and is inclined to consider the merits of the latter.

7.42 A novel suggestion was proffered by Dr John Knight who suggested that investment earnings should be tax free to a certain level (he nominated

⁴¹ Sub no 150, p 10

⁴² AM Corporation sub no 96, p 6

⁴³ Sub no 119, p 8

⁴⁴ Sub no 124, p 6

⁴⁵ Westpac sub no 132, p 7; IFAA Ltd sub no 154, p 11

⁴⁶ Sub no 132, p 7

4 per cent) with the balance being split between the fund and the member for the purposes of tax incidence.⁴⁷

7.43 Another common theme in submissions was the lack of clarity in the deductibility or otherwise of scheme expenses.⁴⁸ The problem alleged is that section 51(1) of the ITAA (the general deductibility provision) does not extend to superannuation funds as they are not engaged in profit-making.⁴⁹ The ASCPA/ICAA submission indicated that the Commissioner of Taxation should release guidelines on the subject.⁵⁰ Noble Lowndes agreed that 'this is a very grey area for superannuation fund trustees and administrators' and preferred the insertion of a specific provision into the ITAA to extend the general deductibility provision to superannuation funds.⁵¹ There was a suggestion by LIFA that all expenses whether of a private or capital nature should be tax deductible and that complying funds should not be treated in the same manner as other taxpayers.⁵² ASFA tendered correspondence between themselves and the ATO indicating that there is some confusion as to the deductibility of certain expenses for fund trustees.⁵³ ASFA suggested that, for example, expenses incurred in amending trust deeds are not deductible but are often due to changes in legislation. The Committee notes that the Commissioner of Taxation has recently issued *Taxation Ruling IT 2672* which indicates that deductions will be allowed for some deed amendments. ASFA calls for the availability of tax deductions for all operating expenses arising from the operation of the fund.⁵⁴

Recommendation 7.3:

The Committee by majority recommends that the fund earning tax should be maintained at its current concessional rate and that it should retain its concessional character by being reduced in line with other reductions in personal income tax rates.

⁴⁷ Sub no 171, p 1

⁴⁸ Noble Lowndes sub no 80, p 7; ASCPA/ICAA sub no 119, p 8; ASFA sub no 89, p 18; LIFA sub no 115, p 11

⁴⁹ Which would put them in breach of the sole purpose test.

⁵⁰ Sub no 119, p 8

⁵¹ Sub no 80, p 7

⁵² Sub no 115, p 11

⁵³ Sub no 89, p 18

⁵⁴ Sub no 89, p 24

Recommendation 7.4:

The Committee recommends that the Commissioner of Taxation should clarify, by way of Taxation Rulings and Determinations, the allowable deductions available to superannuation fund trustees. Further, where appropriate, the position of superannuation funds should be aligned with normal businesses.

Recommendation 7.5:

The Committee recommends that any expenses incurred by trustees in complying with legislative and regulatory changes, some of which will flow from its series of reports, be completely tax deductible for fund trustees.

Capital Gains Tax (CGT)

7.44 The Committee notes the concern of some submitters regarding the *prima facie* inequity of the CGT treatment of assets held by superannuation funds. Mr Bannon of Duesburys Chartered Accountants referred to the arrangements as a "cash and grab" situation by the Government.⁵⁵ Mr Bannon, referred to the injustice of this arrangement due to superannuation funds not being permitted to index the original cost of assets for the years those assets were held prior to 30 June 1988; and that fund trustees must incur costs of market valuing all assets held before that time. The Taxation Institute noted that superannuation funds may be subject to CGT in respect of the disposal of some assets for which other taxpayers would not.⁵⁶

7.45 LIFA suggested that CGT should not apply where there is a deemed disposal due to a change of trustees arising from fund amalgamation or restructuring.⁵⁷ ASFA alerted the Committee to the fact that fund mergers may be an increasing trend.⁵⁸

7.46 In a similar vein, Commonwealth Funds Management (CFM) raised an anomaly in the current CGT treatment of assets held by unit trusts. CFM noted that it is common for superannuation funds, ADFs and PSTs to invest in unit

⁵⁵ Sub no 57, p 2

⁵⁶ Sub no 124, p 5

⁵⁷ Sub no 114, p 11

⁵⁸ Supplementary sub no 89

trusts to diversify and obtain investment economies of scale. While indexation of the cost base of an asset is available for superannuation funds, ADFs and PSTs, 'it is open to the Commissioner of Taxation to treat gains or losses on the realisation of assets by the unit trusts on revenue account and thereby deny indexation benefits'.⁵⁹ They suggested the indexation allowed for complying superannuation funds, ADFs and PSTs be extended to include unit trusts where '100 per cent or the vast majority (say, 90 per cent) of the units in that unit trust are held by a complying superannuation fund, complying ADF or PST'.⁶⁰

Recommendation 7.6:

The Committee recommends that the Treasury consider whether there is scope to correct any anomalies that may exist in the application of Capital Gains Tax (CGT) to fund trustees. The Treasury should specifically consider the application of CGT to units in unit trusts, the application of CGT to pre-September 1985 assets and the application of CGT in fund amalgamations.

Current Pension Liabilities

7.47 The complexity of the exemption for current pension liabilities (paragraphs 7.11 to 7.15 above) was brought to the attention of the Committee. The ATO suggested that the application of this formula 'is unclear and subject to dispute'.⁶¹ Equally, National Mutual indicated that this is one of the areas of taxation that 'requires complex actuarial calculations which place significant cost burdens on fund trustees'.⁶² The joint submission of the ASCPA and the ICAA agreed that these provisions 'are very complicated, and expensive to administer'⁶³ and suggested that they be abandoned and replaced with an increase in the pension rebate from 15 per cent to 30 per cent to compensate for the 15 per cent tax on earnings of the pension assets.⁶⁴

⁵⁹ Sub no 102, p 2

⁶⁰ *ibid*

⁶¹ Sub no 155, p 7

⁶² Sub no 100, p 13

⁶³ Sub no 119, p 9

⁶⁴ *ibid*, p 11

Recommendation 7.7:

The Committee recommends that the Treasury examine the arrangements applying to current pension liabilities to find a less complex regime. Regard should also be had to the complexity of the taxpayer rebates.

Transfer of tax liability

7.48 ASFA raised a concern about the transfer of tax liability on contributions. Under current arrangements, a fund trustee may send to a life office a notice to the effect that the life office must pay the contributions tax rather than the fund trustee. ASFA noted that these notices may often arrive after a life office has already paid an instalment of its own tax liability, 'thus payment is required before the institution is in a position to accurately calculate the appropriate amount to be paid'.⁶⁵ The Committee observes that the ability to transfer tax liability eases the administrative burden on small funds.

Recommendation 7.8:

The Committee recommends that the Treasury examine whether there is scope to overcome the confusion surrounding the transfer of tax liability provisions.

Section 290A

7.49 The Committee also received evidence from a fund member concerning an apparent unintended consequence of the operation of the exemption granted under section 290A.⁶⁶ The legislation limits eligibility of the concession by making the ADF elect to obtain the exemption. This need to elect has apparently meant that at least one ADF has decided to not claim the exemption, and hence deny the benefit to the relevant members, because of the administrative effort required. This has meant that members who should have benefited from the exemption were forced to pay increased tax.

⁶⁵ Sub no 89, p 19

⁶⁶ Mr V.D. Williams, sub no 283

Recommendation 7.9:

The Committee recommends that the Government review section 290A to determine whether there are impediments to ADFs claiming the exemption, and, if so, to remove such impediments to ensure that the exemption is enjoyed by those who are entitled to it.

Conclusion

7.50 The Taxation Laws Amendment (Superannuation) Bill 1992 makes no amendment to the taxation of fund income. This accords with the generality of the Committee's evidence, which was more concerned with the level of tax concessions for contributions and the taxation of benefits. There are, however, a number of matters that the Government should address. Foremost of these is the requirement that fund trustees withhold the contributions tax. The Committee believes that the tax would be more efficiently withheld by employers.

7.51 The Government should clarify the deductions available to superannuation funds, aligning them with the treatment of normal businesses. Furthermore, the apparent anomalies listed above relating to capital gains tax and transfers of tax liability should be examined.

7.52 In addition, the Committee considers that any expenses incurred by trustees in complying with changes flowing from its series of reports should be completely tax deductible for fund trustees.