

*Department of the
Parliamentary Library*



INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 40 2001–02

Family Law Legislation Amendment
(Superannuation) (Consequential Provisions) Bill
2001

ISSN 1328-8091

© Copyright Commonwealth of Australia 2001

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2439.

Information and Research Services publications are available on the ParlInfo database.

On the Internet the Department of the Parliamentary Library can be found at:

<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2001

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 40 2001–02

Family Law Legislation Amendment (Superannuation)
(Consequential Provisions) Bill 2001

Chris Field
Law and Bills Digest Group
30 August 2001

Contents

Purpose.....	1
Background.....	1
Main Provisions	1
Eligible Termination Payments (ETP)	1
Reasonable Benefits Limits	2
Capital Gains Tax	2
Superannuation Surcharge	3

Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2001

Date Introduced: 27 June 2001

House: House of Representatives

Portfolio: Attorney-General

Commencement: Immediately after the commencement of the Family Law Legislation Amendment (Superannuation) Act 2001.

Purpose

To address a number of taxation difficulties which would apply due to the splitting of a superannuation account under the new family law regime dealing with the division of superannuation interests.

Background

For general information on the splitting of superannuation interests on the separation of a couple refer to the Digest for the Family Law Legislation Amendment (Superannuation) Bill 2001.

Main Provisions

Eligible Termination Payments (ETP)

Payments from superannuation funds may be classified as ETPs which receive concessional tax treatment. There is no need for there to be an actual termination of employment for the classification to apply, payment from the fund being sufficient to bring the payment within the ETP regime. The actual taxation treatment of a superannuation ETP amount will depend on a number of variables, such as the period of

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

service of the employee, the employee's age and the taxpayer's reasonable benefit limits (RBL).

When a superannuation ETP is available to a taxpayer but their entitlement has been split under the new family law superannuation arrangements, the current tax laws mean that the member of the fund would be eligible to concessional treatment of their entitlement as an ETP while their spouse would not be eligible for the concessional treatment.

Item 3 of Schedule 1 will insert a **new section 27ACA** dealing with ETPs and non-member spouses. **Proposed sub-section 27ACA(1)** provides that if the superannuation payment would be an ETP for the member it will also be taken to be an ETP for the non-member spouse. The proposed section also contains formulas for determining the split of the various components which comprise the ETP which again seek to put the non-member spouse in the same position as the member regarding the taxation of the ETP (this is achieved through the definition of the 'corresponding amount' which provides for the non-members share of the ETP to be treated as if it were received by the member).

Proposed section 27ACB provides that where there has been a transfer to a non-member under the superannuation splitting arrangements and the amount transferred would have been an ETP prior to the transfer it will continue to have this status in the hands of the non-member to which it has been transferred.

Section 140M of the *Income Tax Assessment Act 1936* (ITAA36) provides for people who pay ETPs to provide certain information to the Commissioner. **Item 7** will extend this obligation to splitting arrangements involving an ETP.

Reasonable Benefits Limits

If a person's entitlements exceed their RBL the excess amount is taxed at marginal rates rather than the concessional rates which apply to superannuation RBLs (for 2000-01 the RBLs were \$506 092 for lump sums and \$1 012 181 for pensions). **Proposed section 140ZFA** provides that any pension payable to a non-member is to be assessed against their pension RBL (lump sums are assessed under section 140ZF), while amendments to section 140ZP provide that if an amount has been assessed against a person's RBL and there is a subsequent split in their benefit, the amount assessed against the RBL is to be reduced to reflect the split (**items 14 and 15**).

Capital Gains Tax

Section 118 of the *Income Tax Assessment Act 1997* (ITAA97) deals with situations where capital gains tax (CGT) does not apply. **Proposed section 118-315** will extend this to situations where an agreement to split a superannuation interest is made or terminated (**item 18**).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Division 126 of the ITAA97 deals with situations where there is roll-over relief from CGT, including on breakdown of a marriage. **Proposed section 126-140** provides that roll-over relief will also be available where assets are transferred from one small superannuation account to another as a result of a payment split. As a result of the roll-over relief the transfer will not generate a CGT liability and the asset's cost base will remain unchanged. Also, if the asset is CGT free as it was acquired before 20 September 1985, it will retain that status after the transfer (**item 19**)

Superannuation Surcharge

The superannuation contributions surcharge applies where a person's adjusted taxable income exceeds the threshold level (\$81 493 for 2000-01) and is phased in to a maximum of 15 per cent when adjusted income exceeds a certain amount (\$98 955 for 2000-01). **Proposed section 10A** of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* provides that if there is a payment split or transfer of part of an interest to a non-member spouse and there is an existing surcharge liability, the superannuation provider holding the members contributions is liable to pay the surcharge. If no superannuation provider is holding those contributions, the member is liable to pay the surcharge (**item 28**).

If a payment split occurs and the member is liable to pay a surcharge debt, the member's superannuation provider must pay the debt within one month of making the split (**item 30**). If the person is a member of a 'Constitutionally protected' superannuation fund (principally government funds) and the member has a surcharge liability, the member will become liable to pay the lower of their debt and 15 per cent of the employer financed benefit (this addresses the situation for public defined benefit funds where the member bears the liability to pay the surcharge and makes it clear that the existing surcharge liability applies to the member of the fund) (**item 37**).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.