Department of the
Parliamentary Library

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 99 2001–02

Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002

ISSN 1328-8091

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

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, 2002

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. 99 2001–02

Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002

Chris Field
Law and Bills Digest Group
11 March 2002

Contents

Purpose 1

Background 1

Preservation 2

Taxation 3

Main Provisions 4

Income Tax Assessment Act 1936 4

Taxation Administration Act 1953 5

Small Superannuation Accounts Act 1995 5

Application 5

Endnotes 5

Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002

Date Introduced: 14 February 2002

House: House of Representatives

Portfolio: Treasury

Commencement: The later of the day that either this Bill or the Income Tax (Superannuation Withholding Tax) Bill 2002 receives the Royal Assent. However, the measures contained in the Bill will apply from 1 July 2002.

Purpose

To include within the withholding tax regime payments from the early release of superannuation and similar amounts paid in respect of certain temporary residents.

Background

Employer contributions to superannuation may be made under employment arrangements, such as awards or individual agreements, but are principally governed by the superannuation guarantee scheme (SGS). The SGS is a statutory scheme which requires employers to contribute to their employee's superannuation unless the employee is excluded from the scheme. Major categories of exclusion are:

- employees receiving wages or salary of less than $450 per month
- wages or salary paid to a person over 70 years
- employees who elect not to receive the contribution as their accumulated superannuation benefits already exceed their pension reasonable benefits limit (RBL) (and who as a result will be fully taxed on additional contributions). The pension RBL for 2001-02 is $1 058 742
- part-time employees under 18 who work no more than 30 hours per week
- wages or salary paid to a non-resident for work performed outside Australia

- senior foreign executive who have entered Australia under various classes of visa, and
- non-residents employed in relation to the Olympic, Paralympic and Goodwill Games.

The SGS therefore has a wide coverage and applies to virtually all full-time employees and adult part-time employees, subject to their earning $450 per month or more. This coverage extends to non-residents working in Australia, except those excluded in the last three categories referred to above.

The rate of superannuation guarantee contribution is, for 2000-01 and 2001-02, 8% and for 2002-03 and later years 9%. The percentage is of the employee's 'notional earnings base', which is based on the greater of the employee's ordinary time earnings or earnings used in an award, or a superannuation arrangement or scheme on which the employer's obligation is based. There is also a maximum on the contributions base for which contributions must be made. For 2001-02 this is $110 040.

Preservation

In its most simple form, the 'preservation rules' provide that a member of a superannuation fund will not be able to withdraw their superannuation entitlements until: they reach their preservation age[1] and retire from the workforce[2]; or are permanently incapacitated, unless special circumstances exist. Prior to 1 July 1998 the preservation age for all members was 55 years but from that date a graduated scale was introduced so that for people born after 30 June 1964 their preservation age is 60 years. The special circumstances for the early release of benefits include:

- Severe financial hardship:
  - for a person who has yet to reach their preservation age the trustee must be satisfied that the member has received Commonwealth income support payments for at least 26 weeks and is unable to meet living expenses, or
  - for a person who has reached preservation age plus 39 weeks and has been receiving income support payments for a cumulative period of at least 39 weeks after reaching preservation age, the member was not gainfully employed on the date of application for the release of benefits (ie the trustee need not be satisfied that the member has retired from the workforce).
- Compassionate grounds: These include:
  - to treat a life threatening disease or acute pain
  - to prevent foreclosure of a mortgage, or
  - for palliative care or funeral and burial expenses.[3]

Even if a condition for early release is satisfied, the amount of benefit released may be restricted to satisfy the condition of release.

Taxation

The following is a simplified outline of the potential taxation benefits available for investment in superannuation, including through the SGS, when compared to receiving the amount as ordinary income. It may be noted that the benefits are generally only fully available to higher income earners.

Where an amount is contributed to a superannuation fund by an employer, tax at the rate of 15% will be payable by the fund on the contribution. If the amount had been paid to the employee directly it would be subject to the employee's marginal tax rate which, for people with incomes of at least $20 000 per year, range from 30% to 47% plus the 1.5% Medicare levy (although the actual rate of tax may be reduced through strategies such as negatively gearing investments, franking credits or the use of tax losses).

The earnings of the superannuation fund are taxed at a maximum rate of 15% compared to those of an individual where the amount would be included in assessable income and so subject to marginal tax rates. In many cases though, neither the superannuation fund or the individual will be paying the maximum rate due to similar factors as mentioned above, ie franking etc. Superannuation funds also receive concessional capital gains tax treatment when compared to an individual.

On withdrawal of funds from the superannuation fund the taxation treatment becomes complex and depends on a large number of factors. In a simple case, if an amount below $105 843 (for 2001-02) from employer contributions is taken as a lump sum the rate of tax will be 15% and 30% for amounts greater than this amount. The payment of 15% of this tax can be removed if the lump sum is commuted to a pension or annuity where the amount received is taxed at marginal rates (income from any investment of a lump sum would also be taxed at marginal rates).

A conclusion which can be reached from the above is that an employer's contributions to a superannuation fund can attract a 15% contributions tax, concessional tax on the earnings of the fund and reduced tax on leaving the fund, particularly if the entitlement is commuted to a pension on leaving the fund. Even if taken as a lump sum the tax treatment will generally be favourable for the taxpayer, and more favourable for those on higher marginal tax rates.

In its superannuation policy statement for the 2001 election, '*A Better Superannuation System*', the Coalition, amongst other measures, announced that non-residents who have permanently departed Australia would be able to access their superannuation benefits before retirement age. The policy states:

> Non-residents who have permanently departed Australia will not be retiring in Australia and often wish to take their superannuation benefits with them to the country in which they live.
>
> A re-elected Coalition Government will ensure that, from 1 January 2002, non-residents have the option of accessing their superannuation benefits after they have permanently departed Australia. Access will be subject to withholding arrangements to return the tax concessions provided for the superannuation benefits.[4]

To allow the early access to superannuation benefits the Superannuation Industry (Supervision) Regulations and other relevant regulations, which contain the provisions relating to circumstances for early release, will need to be amended. To ensure that the tax concessions are returned, this Bill and the Income Tax (Superannuation Payments Withholding Tax) Bill 2002 have been introduced.

According to the explanatory memorandum to the Bill the measure will raise $70 million in 2002-03, $110 million in 2003-04 and $75 million in 2004-05.

Main Provisions

Income Tax Assessment Act 1936

Item 2 of Schedule 1 will insert a definition of ‘departing Australian superannuation payment’ into subsection 27A(1) of the Act. Such a payment will occur where:

- the payment would be an eligible termination payment (ETP) except for proposed paragraph 27A(1)(qa) (this paragraph will be inserted by **item 3** and excludes these payments from the definition of an ETP)
- the payment is made in accordance with the regulations relating to superannuation funds and retirement savings accounts (RSA) (according to the explanatory memorandum to the Bill it is intended that the regulations will specify certain categories of temporary visa holders of which will be covered by the early withdrawal rules)
- the payment is made under section 67A of the *Small Superannuation Accounts Act 1995* (which will be inserted by Part 5 of Schedule 1 of this Bill – see below), or
- the payment is made by an exempt public sector fund which has rules substantially in accordance with those proposed for superannuation funds and RSA.

Proposed section 27GA provides that if an amount is subject to withholding tax as a departing Australia superannuation tax the recipient will be liable to pay tax on that payment at a rate set by Parliament (this is contained in the Income Tax (Superannuation

Payments Withholding Tax) Bill 2002) and the payment is not to be included in person's assessable income.

The payment will be included within the withholding tax regime by **item 1** which will amend this Act and **item 5** which will amend the *Income Tax Assessment Act 1997*.

Taxation Administration Act 1953

The main amendment to this Act will require an entity making a payment to withhold from the payment an amount assessed under the above amendments (**proposed section 12-305 – item 7**).

Other amendments to this Act bring such withholding tax payments within the ambit of normal taxation administration procedures.

Small Superannuation Accounts Act 1995

Item 20 will insert section 67A into this Act which provides:

- an individual may give the Commissioner a request for the release of an account balance, and
- the individual must satisfy the Commissioner that they hold an eligible temporary visa (these will be the same class of visas as prescribed for superannuation funds) and that they have permanently departed from Australia.

Application

Item 21 provides that the amendments will apply to payments made on or after 1 July 2002. (This may be compared to the proposed operational date of 1 January 2002 contained in the policy release.)

Endnotes

1 This is a very simplified description of the preservation rules. The requirement for all benefits to be preserved was only introduced on 1 July 1999 and there were many changes to the preservation rules prior to that date which include restricted and unrestricted unpreserved benefits and various types of holders of these benefits. It is possible for such benefits to be withdrawn prior to preservation age. The area can become very complex.

2 This will be taken to be, for people under 60 years of age where they cease employment and the trustee of the superannuation fund is satisfied that the person never again intends to become gainfully employed, or if the member is aged 60 or more, they have left employment.

3 The rules for early release are contained in the Superannuation Industry (Supervision) Regulations.

4 *A Better Superannuation System*, 5 November 2001, pp. 7 & 8.