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No. 169 2003–04

Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004

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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

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No. 169 2003–04

Superannuation Laws Amendment (2004 Measures No. 1)
Bill 2004

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21 June 2004

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Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004

Date Introduced: 27 May 2004

House: House of Representatives

Portfolio: Treasury

Commencement: Royal Assent

Purpose

The purpose of the Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004 (the Bill) is to alter the eligibility criteria for access to the government co-contribution and to make some administrative and technical amendments to the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (the Co-contribution Act) to ensure the smooth operation of the government co-contribution system.

Background

The Co-contribution Act commenced on 12 November 2003 and applies to the 2003-04 and later years of income. It provides for contributions to be made by the government towards the superannuation of low income earners.

Currently, to be eligible for a government co-contribution in the 2003-04 year of income an individual must have made personal contributions to a complying superannuation fund, have employer-supported superannuation and have total income¹ of less than \$40 000 for the year of income. Where an individual is eligible for the government co-contribution the government will match dollar for dollar an individual's personal contributions up to the individual's maximum co-contribution amount. For individuals whose total income is \$27 500 or less the maximum co-contribution amount payable is \$1000. For individuals whose total income is between \$27 500 and \$40 000 the maximum co-contribution amount decreases at a rate of eight cents for every dollar earned above \$27 500.

An individual does not have to apply for the government co-contribution. Provided they lodge a tax return for the relevant year of income, the Australian Taxation Office will determine, using information collected from superannuation surcharge member contribution statements provided by superannuation providers, if an individual is eligible

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for a government co-contribution payment and calculate the amount that is to be paid into their superannuation fund.

More background information and history of the government co-contribution can be found in the Bills Digests for the [Superannuation \(Government Co-contribution for Low Income Earners\) Bill 2002](#) (the S(GCLIE) Bill 2002) and the [Superannuation \(Government Co-contribution for Low Income Earners\) Bill 2003](#) (the S(GCLIE) Bill 2003).

Basis of policy commitment

On 14 March 2004 the Minister for Revenue and the Assistant Treasurer, Senator the Hon. Helen Coonan announced that the Government was going to extend the Government's superannuation co-contribution measure by:

[widening] the eligibility criteria to include people who earn less than \$450 a month and aren't eligible for superannuation contributions from their employer.²

Currently to be eligible to receive a Government co-contribution a recipient must, amongst other things, have employer-supported superannuation. Employer-supported superannuation is defined in the Co-contribution Act as someone who has received contributions on their behalf in connection with their eligible employment.

The main beneficiaries will be those employees who are paid less than \$450 in a month and part-time workers under 18 years of age who are not caught by the superannuation guarantee system.³ Along with award superannuation, the superannuation guarantee system is the main way low paid and young employees receive employer-supported superannuation. Without this change an employee paid less than \$450 in a month or is under 18 years of age and working part-time falls outside the superannuation guarantee system and usually does not receive employer supported superannuation as currently defined in the Co-contribution Act.

This Bill is expected to result in a cost to revenue of \$195 million over the forward estimates (\$45 million in 2004-05, \$50 million in 2005-06, \$50 million in 2006-07 and \$50 million in 2007-08).

Main Provisions

Schedule 1 – Extension of eligibility

Currently, under sections 82AAS and 82AAT of the *Income Tax Assessment Act 1936* (ITAA 1936), a person is not entitled to a claim a tax deduction for personal superannuation contributions if they receive or are entitled to employer superannuation

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support. The proposed amendments in this Bill do not affect the conditions in the section 82AAS and 82AAT of the ITAA 1936.

Nevertheless, removing the requirement for employer-supported superannuation and replace it with test dependent on the proportion of their income earned from eligible employment (which is not reliant on a person actually being eligible for employer-supported superannuation) could result in a person being able to claim a tax deduction for personal superannuation contributions and receiving the government co-contribution. Consequently, the provisions relating to a person claiming a tax deduction for personal superannuation contributions must be amended so that a person eligible for the government co-contribution from also being able to claim a tax deduction for their personal superannuation contributions.

Item 1 amends the note following subsection 82AAT(1) of the ITAA 1936 so that rather than telling the reader that under section 26-80 of the *Income Tax Assessment Act 1997* (ITAA 1997) the deduction under section 82AAT will be denied if the contribution is made more than 28 days after the person turns 70 years of age it will inform the reader that section 26-80 of the *Income Tax Assessment Act 1997* provides for cases where the deduction under subsection 82AAT(1) will not apply.

Item 2 inserts **proposed paragraph 26-80(3)(c)** into the ITAA 1997 so that a person is denied a deduction under section 82AAT of the ITAA 1936 if they are entitled to a government co-contribution.

Item 3 provides that the amendment made by **item 2** of the Bill will apply to the 2004-05 year of income and later years of income.

Currently a person must satisfy a number of criteria set out in section 6 of the Co-contribution Act to be eligible for the government co-contribution. One of the criteria is that the person must be in receipt of employer-supported superannuation. **Items 4** and **5** amend the Co-contribution Act so that from 2003-04 year of income a person will be eligible for the government co-contribution even though they do not receive employer-supported superannuation.

To be eligible for the government co-contribution a person must meet all of the following conditions:

- the person makes an eligible personal superannuation contribution during an income year (paragraph 6(1)(a)), and
- the person has employer-supported superannuation for the income year (paragraph 6(1)(b)), and
- the person's total income for the income year is less than the higher income threshold (\$40 000 for the 2003-04 year of income⁴) (paragraph 6(1)(c)), and

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- an income tax return for the person has been lodged (paragraph 6(1)(d)), and
- the person is less than 71 years old at the end of the income year (paragraph 6(1)(e)), and
- the person does not hold an eligible temporary resident visa at any time during that year of income (paragraph 6(1)(f)).

Item 4 amends paragraph 6(1)(b) of the Co-contribution Act removing the requirement that the person has employer-supported superannuation for the income year and replacing it with a requirement that the person must have 10 per cent or more of their total income for the year of income attributable to eligible employment. **Item 5** removes the definition of employer-supported superannuation in subsection 6(2) of the Co-contribution Act and replaces it with a definition of eligible employment. This definition refers to the definition of eligible employment in Subdivision AB of Division 3 of Part III of the ITAA 1936.

The result of these two amendments is that for the 2003-04 year of income a person will be eligible for the government co-contribution if the person:

- receives 10 per cent or more of their total income as an employee for the purposes of the *Superannuation Guarantee Administration Act 1992* (the SGAA), and
- they meet the other requirements in paragraphs 6(1)(a) and 6(1)(c) to (f) of the Co-contribution Act.

The amendments widen the eligibility criteria as they permit employees who do not receive employer contributions, such as superannuation guarantee contributions due to the fact they satisfy one of the exceptions in the SGAA, to be eligible for a government co-contribution. The current eligibility criteria require the member to have employer contributions made on their behalf.

Item 6 provides that the amendments made by **items 4** and **5** of the Bill apply to government co-contribution for the 2003-04 year of income and later years of income.

Schedule 2 – Administrative amendments

Currently under the Co-contribution Act where the Commonwealth is late in making a co-contribution payment to an eligible person, they are required to pay interest to the eligible person on the unpaid amount. Currently references to interest on unpaid amounts in the Co-contribution Act refer to a rate specified in the Superannuation (Government Co-contribution for Low Income Earners) Regulation 2004. **Part 1** amends the interest on unpaid amounts provisions of the Co-contribution Act so that the interest rate will be determined by referring to the base interest rate defined in section 8AAD of the Administration Act.

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It is interesting to note the difference between the rate of interest that the Commonwealth must pay where it owes money people under the tax system verses the rate of interest that a taxpayer must pay where it owes money to the Commonwealth under the tax system. Generally, in the tax system when a taxpayer has made an overpayment of tax or the Australian Taxation Office (ATO) is late in making a refund to a taxpayer, the Commissioner of Taxation is required to pay interest on an overpayment or late refund payment. The rate of interest is set in section 214A of the ITAA 1936 which refers to the base interest rate which is defined in section 8AAD of the *Taxation Administration Act 1953* (the Administration Act). Section 8AAD of the Administration Act defines the base interest rate for each quarter as the monthly average yield of the 90-day Bank Accepted Bills published by the Reserve Bank of Australia for the middle month of the previous quarter. When a taxpayer is late in paying a tax assessment the payment is subject to a penalty called the general interest charge (GIC). Section 8AAD of the Administration Act defines the annual GIC set in each quarter as seven percentage points above base interest rate. Therefore, if the ATO over taxes a taxpayer the interest they pay as penalty is significantly lower than if the taxpayer/superannuation provider is late in making a payment/repayment.

Part 2 amends some of the payments provisions and underpayment and overpayment provisions. There are time limits for superannuation providers to credit co-contribution amounts to member's accounts (**item 7**) and time limits for superannuation fund trustees to repay to the Commonwealth an underpaid amount where that amount cannot be credited to the eligible person (**item 9**). **Items 13 to 15** also impose the general interest charge on amounts that the superannuation providers are required to repay if the repayments are not made within the legislated timeframes.

Currently section 54 of the Co-contribution Act requires the Commissioner of Taxation to provide each quarter a report for the Minister on the operations of the government co-contribution. However, it does not specify exactly what information the Commissioner of Taxation is required to provide. **Part 3** amends the reporting requirements in section 54 of the Co-contributions Act specifying the information on the government co-contribution that the Commissioner of Taxation must provide to the Minister so that the Minister can present a report to the Parliament from 1 July 2004.

Part 4 is a technical amendment to replace references to the Superannuation Holding Account Reserve with the Superannuation Holding Accounts Account.

Concluding Comments

The Bill achieves the government's objective of improving the practical and administrative operations of the Co-contribution Act. It makes a sensible adjustment to the eligibility criteria for the government co-contribution so that all employees, regardless of whether they are entitled to have superannuation guarantee contributions made on their

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behalf, will be eligible for the government co-contribution if they meet all the eligibility criteria. This is where the problem occurs for the government co-contribution measure. These amendments to the government co-contribution measure will not help those employees, who currently cannot afford to make personal contributions, to find the extra money to benefit from the government co-contribution systems and these amendments.

The reports that will be published in accordance with section 54 of the Co-contribution Act should provide some information on this issue in the future. However, a more interesting report would be for the Commissioner of Taxation to provide information on the number of taxpayers whose total income is below the government co-contribution thresholds, who have received the minimum superannuation guarantee contribution from their employer but who do not receive the government co-contribution because they have not made any personal contributions.

Endnotes

- 1 Section 8 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* defines total income as the sum of a person's assessable income and reportable fringe benefits for the income year.
- 2 Senator H. Coonan, *Matched super extended to one million more Australians*, Press Release, no. C013/04, Department of the Treasury, Canberra, 14 March 2004.
- 3 *Explanatory Memorandum*, p. 5
- 4 This will increase to \$58 000 for the 2004-05 year of income if the Superannuation Budget Measures Bill 2004 is passed by parliament and receives Royal Assent.

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