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Tax Laws Amendment (Superannuation Contribution Splitting) Bill 2005

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Contents

Tax Laws Amendment (Superannuation Contribution Splitting) Bill 2005

Date Introduced: 12 October 2005

House: House of Representatives

Portfolio: Treasury

Commencement: Royal Assent, but the provisions of this Bill will not take practical effect until the relevant regulations are made specifying how and when the contributions-splitting regime will operate. These regulations are expected to provide that contributions made on or after 1 January 2006 will be able to be split.

Comment

A fund member will be able to request a contribution split from 1 July 2006. A splitting request can only be made in respect of most of the contributions made in the previous financial year; therefore, a fund member will have to wait until after the close of the current financial year to request that contributions made on or after 1 January 2006 be split with their spouse.[1]

Purpose

The Bill proposes to amend the *Income Tax Assessment Act 1936* (ITAA 36) to facilitate a person splitting their superannuation contributions with their spouse. Supporting amendments will have to be made to the:

- Superannuation Industry (Supervision) Regulations 1994 (SIS Regs)
- Retirement Savings Account Regulations 1997, and
- Income Tax Regulations 1936.

The proposed changes to these regulations are available from the Treasury web site.[2]

Outline of Proposal

This Bill makes the necessary changes to the ITAA 36 to facilitate a person splitting both personal and employer superannuation contributions made during the previous financial year (including the Superannuation Guarantee Contributions made by the employer on their behalf) with their spouse. It achieves this by introducing a new type of rollover eligible termination payment (ETP), to be known as a 'contributions-splitting ETP'.

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The fund member provides the superannuation fund trustee with a request to divide the previous financial year's splittable superannuation contributions. If this request is accepted, the superannuation fund trustee transfers the nominated proportion of these contributions to the nominated superannuation fund. That money will, for taxation purposes, be known as a 'contribution splitting ETP'.

A self employed person will not be able to claim a tax deduction for amounts that are split with their spouse. They will, however, be able to claim a tax deduction in respect of contributions that are not split with their spouse.

Further details on how the proposed contributions splitting regime will work will be apparent when the required changes to the regulations are made (see below).

Background

Basis of policy commitment and Policy Rational

The Commonwealth Government originally announced its superannuation contribution splitting proposal during the 2001 Election campaign in its *A Better Superannuation System* announcement.[3] The proposal was part of a package of reforms to the superannuation system that the Commonwealth Government proposed to introduce following the 2001 election. A key factor in the Commonwealth Government's announcement was the desire to broaden the accessibility of superannuation to those outside the paid workforce.[4]

The Commonwealth Government's reasoning for the superannuation contribution splitting initiative (as announced in the *A Better Superannuation System*), and other general media releases covering its reform of superannuation, was:

> to assist families maximise the benefits available in superannuation and to provide an avenue for spouses to share their superannuation benefits equally.[5]

In July 2002 the Commonwealth Government released a Consultation Paper on three options it was considering for the splitting of superannuation contributions. The options outlined in the Consultation Paper were:

- prospective split (each contribution would be split as it was paid)
- annual split (contributions would be split after the end of the financial year in which the contributions were made), and
- joint accounts (a couple would own a joint superannuation account similar to a joint bank account).[6]

At that time the Commonwealth Government did not include as an option the splitting of superannuation benefits (as opposed to contributions) as it was not consistent with the

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Government's election commitment and its higher cost to revenue.[7] The Explanatory Memorandum to the current Bill covers this option.[8] The Commonwealth Government indicated that it would be implementing the annual split option and the current Bill (and associated draft regulations) follows this model. [9]

The Government introduced the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 into the House of Representatives on 11 September 2003. This Bill lapsed with the calling to the 2004 election.

During the 2004 election campaign the Liberal Party of Australia released *Super for All And Understanding Money* which reaffirmed a Coalition Government's commitment to implement superannuation contribution splitting between couples. This has been a consistent policy approach since 2001.

The Government's intention to implement superannuation contributions splitting was again confirmed in the 2005–06 Budget. However, the proposed model noted in the budget documents differed from the model contained in the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003. The Budget papers proposed that the contribution splitting would be voluntary for superannuation funds, that is, a superannuation fund trustee can refuse to split the contributions. The previous proposal was for a mandatary split of contributions if the member so instructed the trustees of their superannuation fund. This change was undertaken following comments from industry that some funds may be forced to provide contributions splitting where few or no members have an interest in taking advantage of this provision.[10]

In a press release covering the introduction of the latest splitting Bill into Parliament the Hon. Mal Brough MP, the current Minister for Revenue and Assistant Treasurer, noted that:

> Superannuation splitting will allow contributions to be 'split' or shared with a spouse. This will allow non-working or low income spouses to accumulate their own superannuation, and gives families more choices in how they prepare for their retirement.[11]

Details of Proposed Draft Regulations

As noted above, the details of how the superannuation contributions splitting regime will work will be contained in amendments to various regulations.

Contributions

Significant points in the proposed regulations relating to contributions are:

- contributions splitting will apply only to splittable contributions made in the previous financial year to an accumulation fund and some defined benefit funds where part of the member's benefit is an accumulation interest (proposed SIS Regs 6.42 & 6.43).[12] In effect, only the previous financial year's contributions can be split with a person's spouse, and only after the close of the relevant financial year

- there are no limits on the type of superannuation fund to which the contributions can be sent. Just how this will work in the case of defined benefit funds, particularly those whose benefits are solely determined on a basis other than the accumulated contributions plus associated investment earnings, remains to be seen
  - in particular, the spouse, or former spouse, can be a member of a standard employer sponsored superannuation fund. This means that the contributions do not have to be split into a public offer fund (which may charge higher fees), but may go to an account in the spouses name in their partner's current employer fund (proposed SIS Reg 3.01(h)(i)), and
  - this will not apply where a person's employer fund is not a standard employer sponsored fund, such as some public sector defined benefit funds

Preservation

A 'contribution splitting ETP' is a preserved benefit. This means that the receiving spouse cannot withdraw those benefits until reaching, or being past, their preservation age[13] (proposed SIS Reg 6.15).

Exclusions

Under proposed SIS Reg 6.42(2) contribution splitting will not apply to:

- superannuation monies that have already been rolled over, transferred or allotted
- payment from eligible non-resident non-complying superannuation funds (effectively overseas superannuation funds that do not comply with Australian superannuation laws and regulations)
- payments made as a consequence of the termination of employment or as a result of the disposal of an asset, and
- superannuation contributions that are subject to a split under Family Law provisions (proposed SIS Reg 6.43(2)).

Financial year basis

Only a person's splittable contributions for the previous financial year are available to be divided (proposed SIS Regs 6.42 and 6.43).

Amount that can be divided

There are some restrictions on the proportions of the splittable contributions from the previous financial year that may be transferred to a person's spouse. Only 85 per cent of a person's previous years deductible contributions can be split. But 100 per cent of a fund members' 'personal contributions' from the previous financial year can be split (proposed SIS regulations 6.40 and 6.44(2)(b)).

A 'deductible contributions' is defined in proposed SIS Reg 6.41, for the purposes of these regulations, to be either:

- a contributions that is a taxable contribution for the purposes of section 274 of the ITAA 36. These are amounts that are subject to the superannuation fund income tax of 15 per cent
- a contribution that, but for the Commonwealth's inability to tax the property of a State, would be a taxable contribution for the purposes of section 274 of the ITAA 36. These are amount paid into constitutionally protected funds that otherwise are not subject to the 15 per cent superannuation fund income tax, and
- an allocated surplus amount, which are defined in proposed SIS Reg as amounts allocated from a regulated superannuation fund surplus, by an trustee, to meet an employer's liability to make contributions. These amounts arise from the surplus earnings of defined benefit superannuation funds and are allocated to the member's account instead of the employers contributions to that fund.

A 'personal contribution' is defined in proposed SIS Regulation 6.41 to be a contribution mad by the taxpayer, or by another person, to a regulated superannuation fund, in relation to which no tax deductions are allowable.

Role of Superannuation Fund Trustee

The superannuation fund trustee **may** accept an application split benefits if all the relevant requirements are met (proposed SIS Reg 6.44.). They may decline to accept the application even though all the necessary requirements for such a split have been met:

  – one reason for such a refusal would be if splitting the previous financial year's contributions left insufficient funds in the employee's account to meet a tax liability or fund charges.[14]

Invalid Applications

Proposed SIS Reg 6.44 notes that applications to split the previous year's contributions are invalid when:

- a member has already made an application in relation to the same spouse and the trustee is considering the first application or has already given effect to that application
- if the amount of benefits to which the application relates exceeds the maximum splittable amount

  – proposed SIS regulation 6.40 defines the 'maximum splittable amount to be 85 per cent of the deductible contributions and 100 per cent of the personal contributions made by a fund member in the past financial year, and

- the member's spouse is aged 65 years or more, or the member's spouse is aged between the relevant preservation age and 65 years of age and permanently retired.

These conditions effectively restrict the number of application to one a year, restrict the amount of previous year's contributions that can be split and prevent amounts being transferred to a spouse who is over 65 years of age or who has retired from the workforce.

Application to split benefits

Under proposed SIS Reg 6.44(3) the application to split an employee's contribution must be accompanied by a statement from the spouse that they:

- are not retired if they are between their relevant preservation age and age 65, or
- are below their relevant preservation age.

For those born before 1 January 1960 their preservation age is 55. If a person is born between 1 January 1960 and on or before 30 June 1964 their preservation age is between 56 and 59. For those born on or after 30 June 1964 their preservation age is 60.[15]

Under proposed SIS Reg 6.44(4) the application must specify the amount of the :

- members deductible contributions, and
- members personal contributions

that are to be split with the member's spouse.

This requires the member to keep accurate records of the contributions made during the previous financial year. [Otherwise, the member will have to apply to their superannuation fund to obtain this information.]

Decision on application

Under proposed SIS Reg 6.45, if a valid application is accepted by a fund trustee they must split the contributions as soon as practicable, but in any case within 90 days of receiving that application.

Non-commutable income streams

Importantly, a receiving spouse that meets the above age and retirement requirements can commence to be paid a non-commutable income stream (on or after they reach their preservation age) and still take advantage of these new provisions.

These Regulations have not been tabled, and are subject to comments from both the superannuation industry and public. Accordingly, these points may differ from the regulations finally tabled in Parliament.

Comment

The current draft regulations have been subject to extensive industry comment. The initial draft regulations allowed all of a person's contributions made in the previous financial year to be split with their spouse. As noted above the current draft regulations limit the amount of the previous year's contributions that can be split.

Position of significant interest groups/press commentary

The Association of Superannuation Funds of Australia (ASFA) stated in its response to the 2002 Consultation Paper that it:

> supports Government policies that assist families, especially those with broken paid work patterns, to maximise the benefits available in superannuation and in retirement. The "splitting" proposal could improve the economic position of women (and couples) where one spouse is only able to work part time or for a reduced period of time.[16]

However, ASFA suggested that a better result could be achieved in terms of maximising retirement benefits, along with providing a simple and efficient system, if the splitting occurred at the retirement point of either spouse. ASFA recognises that this leads to the non-working spouse not having control over superannuation assets to the same extent as through annual contributions splitting, but believes it will give a better outcome in the future. They also recognise that their proposal will probably need to be restricted to benefits accumulated after a specific date due to budgetary constraints.[17] Both the Investment and Financial Services Association (IFSA)[18] and CPA Australia[19] also support the splitting of superannuation at the end benefit, or retirement stage.

ASFA has also observed that there would be a low take up rate of contribution splitting by younger couples and that it would be more attractive to more mature people that actively plan and supplement their retirement income saving. Nevertheless, ASFA stated it was concerned about the complexity of the options in the consultation paper and the impact it would have on administration costs for funds.

Other suggestions included in submissions to the Commonwealth Government in response to the 2002 consultation Paper were:

- allowing 100 per cent of employer contributions (that is the employer's Superannuation Guarantee payments made on behalf of the employee and other employer contributions) being available for splitting [supported by the Corporate Superannuation Association and the Law Council of Australia]

- extending the policy to defined benefit funds [supported by the Law Council of Australia], and
- giving funds the flexibility to determine the splitting administrative processes (prospective splitting, annual splitting or some other option) based on their structure and current administrative set up [supported by the Law Council of Australia].[20]

More recent comment by the superannuation industry has welcomed the current bill. In a press release following the 2005–06 budget ASFA noted that

> ASFA also welcomes the introduction of superannuation splitting arrangements from 1 July 2006. This will allow a fund member to split their compulsory and personal super contributions with their spouse, to enable them to receive part of the contribution. This improves the taxation position for families at retirement.[21]

Deputy Chief Executive of the Investment and Financial Services Association (ISFA), Mr John O'Shaughnessy has noted:

> ISFA has long supported the principle that couples should be able to plan effectively for retirement together….The Assistant Treasurer and Treasury are to be commended on this Bill.[22]

Pros and cons

The advantages of the superannuation contribution splitting policy are:

- single income couples will have access to two ETP low rate thresholds[23] and two separate Reasonable Benefit Limits (RBL)[24]
- if the superannuation benefits are converted to income streams in retirement each member of the couple will have access to the superannuation pension and annuity rebate[25]
- low income and non-working spouses will have access and control of their own superannuation, and
- both members of a couple can make superannuation savings when they cannot afford voluntary contributions.

The disadvantages of the superannuation contribution splitting policy are:

- two separate accounts for single income couples could result in two lots of fees and charges for what is effectively one contribution
- additional administration and system costs for superannuation funds
- comparatively disadvantages older workers who will have little time to build up significant benefits from the contribution splitting initiative

  - logic suggests that mature workers are more likely to take advantage of the initiative. Mature workers will most likely have accumulated superannuation benefits approaching either their RBLs or there low tax rate eligible termination payment (ETP) tax threshold (currently $129 751)[26]
- comparatively disadvantage members of some defined benefit funds who will not be able split their benefits with their spouse, and
- comparatively disadvantages those who are not in a traditional relationships, as the regulations require that contributions can only be split with a spouse
  - the term spouse is defined in subsection 6(1) ITAA 36 as 'spouse', in relation to a person, includes another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person[27]
  - otherwise, the term 'spouse' bears its ordinary meaning of a person being either a husband or wife, that is a person of the opposite sex. [28]

Comment

The major advantage will be to allow couples to access two ETP lower rate tax thresholds. The contributions that are sent to the receiving spouse are all classed as post 1983 contributions (**Item 3** of **Schedule 1**) as are the earnings of those monies. In the 2005–06 year the first $129,751 of post 1983 amount received as a lump sum is tax free.

Access to two RBL limits is an advantage to comparatively few couples, as the majority of those receiving superannuation benefits upon retirement are not affected by either the lump sum or pension RBLs.

Impact of Revenue

Estimated short term costs to revenue of the proposed annual split model are[29]:

Year	2007–08	2008–09
Cost	$4.0m	$4.7m

Source: Explanatory Memorandum, Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2005. 12 October 2005, p .4.

In 20 years the cost to revenue in a single year may increase to approximately $25 million and after 40 years approximately $100 million per year in real dollar terms. This will be a significant cost to revenue at a time when the Federal Budget will be straining to meet the demands of an aging population.[30]

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ALP/Australian Democrat/Greens policy position/commitments In its consideration of the now lapsed 2003 Contributions Splitting Bill (prorogued due to 2004 elections) the Australian Labor Party (ALP) reserved its position on whether it is going to support superannuation contribution splitting until the Senate Economics Legislation Committee has complete its review of the Bill. The ALP were concerned that the people who will benefit most from superannuation contribution splitting will be high income earners and their spouses, with little benefit going to low income earners.[31]

Recently, Labour's Finance spokesman, Mr Lindsay Tanner MP, criticised the splitting proposal because no projected benefits or savings levels had been calculated.[32]

As at the date of writing the current Bill had been passed by the House of Representatives. In the second reading debate on 10 November 2005, Ms Jill Hall MP put forward Labor's position on this Bill, making the following points:

- the measure would not result in additional superannuation contributions being made
- the split superannuation benefits would be subject to two sets of fees, instead of one
- the measure would benefit mainly higher income earners by allowing access to two low tax eligible termination payment thresholds when the benefits were taken as a lump sum
- the measure would also benefit very high income earners through access to two reasonable benefit limits for what was essentially the one superannuation benefit (as noted below a reasonable benefit limit controls the amount of concessionary taxed superannuation benefits that can be received by an individual)
- the measure would not apply to same sex couples, or to members of defined benefit superannuation funds
- the measure increases superannuation fund administration costs, and
- the measure increases the intergenerational costs of retirement due to the foregone revenue.

In Labour's view, these points indicate that the government is dealing with superannuation issues in a piecemeal fashion. Despite these concerns Labor did not oppose the Bill.[33]

Recent debate in the Parliament regarding the amendment of the definition of spouse to cover same-sex couples may again be raised context of this Bill, given that the proposed regulations and legislation require that a person's superannuation contributions can only be split with their spouse. In this regard, the Shadow Minister for Environment and Heritage, Mr Anthony Albanese has called for contributions splitting to apply to members of same sex couples.[34]

Main Provisions

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Item 1 of **Schedule 1** inserts the definition of a 'contributions-splitting ETP' into the ITAA 36.

Item 3, in combination with **Item 9** requires that a 'contribution-splitting ETP', when it is first transferred to the receiving spouse's superannuation fund, has a service period of zero days.[35] These items ensure that a 'contributions-splitting ETP will only contain post 1983 money.

Item 8 protects a 'contributions-splitting ETP' from being considered an ETP in paragraph (b) of the definition of eligible termination payment in **sub section 27A(1)** ITAA 36. This paragraph deals with the definition of ETPs that have been reduced in circumstances where the taxpayer has received payment from the now obsolete **section 23FB** ITAA 36 funds, receives valuable consideration in return for the transfer of a right to receive payments from an old **section 23F** ITAA 36 fund, or other valuable consideration from such actions in respect of other funds.

Item 15 ensures that a 'contributions-splitting ETP' will always be a 'qualifying ETP'.

A qualifying ETP is one that is subject to the concessional tax rates applying to superannuation benefits on withdrawal and is able to be the basis of a pension or annuity that qualifies for the pension and annuity tax rebate. Further, only a qualifying ETP can be rolled over between superannuation funds. A non-qualifying component of an ETP is assessable as ordinary income and taxed at ordinary rates.

Item 16 amends the table in **subsection 27AB(1)** to include 'contributions-splitting ETPs'. The practical effect is to ensure that such ETPs are classed as coming from a 'taxed' source. ETPs that come from a taxed source are subject to lower rates of tax upon withdrawal from the superannuation environment.

Item 17 allows for regulations to be made in relation to 'contributions-splitting ETPs'.

Item 18 requires the trustee paying the 'contributions splitting ETP' to provide the Commissioner for Taxation with the information specified in the relevant regulations. This provision is needed to administer the RBL elements of the superannuation system.

Item 20 inserts new subparagraph (d) into **section 82AAT(1B)** ITAA 36. This particular section prevents eligible persons (generally the self employed) from claiming a deduction for superannuation contributions:

- for which a deduction has already been claimed
- after they cease to be a member of the particular superannuation fund to which the contributions was made, and

- specifies that once a notice has been given to the superannuation fund trustee of the person's intention to claim a deduction in respect of a contribution it cannot be revoked.

The mechanism by which a tax deduction is claimed is that an eligible person gives the trustee of the superannuation fund a notice of their intention to claim such a deduction (see **section 82AAT(1A)**).

New sub-paragraph (d) prevents the member from giving notice to the trustee of a superannuation fund of any intention to claiming a tax deduction in respect of monies that make up a 'contributions-splitting ETP. **Item 22** has the same effect in respect of contributions-splitting ETPs paid from Retirement Savings Accounts.

Concluding Comments

Superannuation contributions splitting will narrow the tax base by potentially reducing the amounts subject to tax once the benefits are withdrawn.

One argument against the implementation of the superannuation contributions splitting initiative is that the main beneficiaries will be high income earners who are fast approaching the reasonable benefit limit.[36] Evidence provided by both AFSA and Treasury to the Senate Select Committee on Superannuation's Inquiry into 'Superannuation and standards of living in retirement' was that very few people's superannuation benefits reach either the lump sum or the more generous pension RBL limit, thereby attracting tax on amounts over these limits at higher rates. Generally, lump sum balances on average are small compared to the limits available. Evidence provided by the Treasury cited in the Committee's report,[37] issued in December 2002, included:

> that the average superannuation holding per person is about $62 000 and that average superannuation payouts are currently around $72 000 per person.[38]

The Senate Committee's report also noted that evidence provided by ASFA was that each year approximately 650 people, out of approximately one million or so taxpayers in the age group receiving superannuation benefits, are paying tax on excess benefits. That is, their superannuation benefits benefits exceed their RBLs.[39]

For the 2003-04 year of income the lump sum RBL was $588 056 and the pension RBL was $1 176 106. For the 2005–06 year the RBLs are $648 946 and 1 297 886 respectively.

There is little likelihood, given that the average payout was around $72 000 in 2003–04, and that the RBLs increase in line with increases in the Average Weekly Ordinary Time Earnings (AWOTE), that many people will exceed their RBLs. The average lump sum payout did not even exceed the then ETP low rate threshold of $117 576 in 2001–02 (now $129 751).

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The estimated average size of superannuation benefit for 20 per cent of those between 50 and 69 is above $100 000, but still comfortably below the current low rate ETP threshold.[40] It is unlikely to exceed this limit in the years to come, as it also increases each year in line with increase with AWOTE.

Some high income earners will probably make use of contributions splitting to remain under their RBLs. The main beneficiaries may be very high income earners, whose superannuation benefits are more than likely to exceed their RBLs, but who have a low income spouse. But given the possible number of taxpayers involved and that only future contributions will be able to be split, the impact in the short term will be very small.

These points mean that, currently, the impact of this measure upon tax revenue foregone will be small, if at all noticeable. It is difficult to predict whether there will be a significant increase in the number of tax payers whose superannuation benefits exceed their RBLs. However, as more people spend longer in the superannuation system, the number of such taxpayers may well rise.

If the number of people affected by the RBLs does rise, this measure may potentially lead to a significant loss of tax revenue. This impact may occur the effects of the ageing population will have begun to affect the Federal Budget. However, a whole of Budget approach covering loss of revenue, reduction in welfare benefits and reduction in Government funded health care and aged care costs resulting from taxpayers taking advantage of the superannuation contributions splitting provisions needs to be considered before any judgment can be made with respect to the equity, or otherwise, of this policy.

In the long run allowing an employee to split their employer superannuation guarantee contributions will result in a lower superannuation benefit for the employee. However, taking into account the advantages of a couple having access to two ETP low rate threshold limits and/or pension rebates and two lump sum/pension RBLs, they may be better off splitting superannuation guarantee contributions.

Some sections of the media have suggested that one reason for introducing superannuation contribution splitting is to prevent taxpayers taking advantage of the recently commenced splitting of superannuation benefits in the event of divorce by entering into a sham divorce.[41] While this is possible, such a suggestion by a financial planner to a client so that they can stay under their RBLs and not pay any excess tax, would be unlawful.[42] Such a scheme may also result in the ATO taking a closer look at the actions of the taxpayer. This would be an expensive way of saving some tax and could potentially backfire on the high income spouse if the divorce remains permanent when that had not been the original plan.

High income earners will eventually benefit from the implementation of this policy, but by the time they receive this benefit, middle income earners and those low income earners who are able to take advantage of the policy will also be receiving benefits. The viability of the policy should not be dismissed because of a view that it benefits high income earners more than low income earners. These changes may also result in high income earners becoming less of a burden on the Federal Budget in the long term.

The main problem will be convincing young couples to take advantage of this policy, when it is an accepted fact that young people tend to concentrate on other issues such as paying off mortgages and educating children.[43]

Endnotes

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1 Thomson ATP, 'Superannuation splitting between spouses Bill' *Weekly Tax Bulletin*, 14 October 2005, item 1721, p. 1621.

2 See Treasury Web Site at http://www.treasury.gov.au/contentitem.asp?NavId=002&ContentID=1018 (accessed 14 October 2005), and revised regulations at http://www.treasury.gov.au/contentitem.asp?NavId=002&ContentID=1037 (accessed 24 November 2005)

3 'A Better Superannuation System', *The Howard Government: Putting Australia's Interests First: Election 2001: Our Future Action Plan: A Better Superannuation System*, the Hon. John Howard, Prime Minister, Liberal Party of Australia, 5 November 2001, p. 4.

4 ibid., p. 2.

5 'Revitalising Superannuation', *Media Release: C040/03*, Senator, the Hon. Helen Coonan, Minister for Revenue and the Assistant Treasurer, 25 May 2003.

6 *Splitting of Superannuation Contributions Between Couples – Consultation Paper July 2002*, issued by Senator the Hon. Helen Coonan, then Assistant Treasurer and Minister for Revenue, Department of the Treasury, Canberra, July 2002, p. 6. ('Consultation Paper')

7 Consultation Paper, p. 6.

8 The Hon Peter Costello MP. Explanatory Memorandum, Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2005. 12 October 2005, p.20.

9 The Hon. Peter Costello MP, Treasurer, Explanatory Memorandum, Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003, 11 September 2003, p. 3. I am indebted to a previous Bills Digest on the topic of superannuation contribution splitting for material in the preceding section, see Graeme Selleck, 'Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003', Bills Digest No. 59, Parliamentary Library, Canberra, 2003–04 at http://www.aph.gov.au/library/pubs/bd/2003-04/04bd059.htm accessed 18 August 2004.

10 The Hon. Peter Costello MP, Treasurer, *Budget Measures 2005–06*, Budget Paper No. 2, 10 May 2005, p. 32.

11 The Hon. Mal Brough MP, Minister for Revenue and Assistant Treasurer, 'A Super Idea for Families' Media Release, 12 October 2005.

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12 A Defined Benefit superannuation fund that has an accumulation interest is known as a Hybrid Fund. The Commonwealth Superannuation Scheme is such a fund because its benefits are made up of an accumulation interest (the member's own contributions plus associated investment earrings) and a defined benefit interest the member's pension based on the members years of service and final average salary.

13 For those born before 1960 preservation age is 55. For those born on or after 1 January 1960 preservation age is 56 to 60, depending on date of birth.

14 Thomson ATP, 'Superannuation splitting between spouses Bill' *Weekly Tax Bulletin*, 14 October 2005, item 1721, p. 1622.

15 Superannuation Industry (Supervision) Regulation 6.01.

16 *ASFA Response to Government Consultation Paper – 'Splitting of Superannuation Contributions Between Couples'* issued by the Association of Superannuation Funds of Australia Ltd, Sydney, August 2002 ('ASFA Submission').

17 ASFA Submission.

18 'Split Spouse Contributions', *IFSA Voice*, November 2002, p. 4.

19 *Splitting of Superannuation Contributions Between Couples* issued CPA Australia, Sydney, 23 August 2003.

20 Graeme Selleck, ibid.

21 Association of Superannuation Funds of Australia, 'Budget – Pretty Super', *Media Release*, 10 May 2005.

22 'Government to allow super splitting', *Financial Standard*, 13 October 2005, and Investment and Financial Services Association, 'Split Super contributions will help couples do it better in retirement' *Media Release*, 12 October 2005.

23 An ETP Low Rate Threshold is the amount of taxed post 1983 superannuation benefits (superannuation that has been accumulated after 1 July 1983 and has been subject to superannuation fund income tax) that can be received after a person's preservation age tax free. In the 2005–06 tax year the low rate threshold is $129 751.

24 A Reasonable Benefit Limit is a lifetime limit on the amount of concessionally taxed superannuation benefits a person can receive. In the 2005–06 year the lump sum RBL is $648 946 and the pension RBL is $1 297 886. These limits are indexed each 1 July according to the increase in the Average Weekly Ordinary Time Earnings (AWOTE) calculated by the Australian Bureau of Statistics.

25 Where a person receives an eligible termination payment and uses it to purchase an annuity or pension from a taxed superannuation fund and the person is 55 or more years of age, the person is entitled to a tax rebate, at 15 per cent, on the assessable part of the annuity or pension payment that is not in excess of the person's reasonable benefit limit.

26 The low rate ETP tax threshold is the amount under which no tax is charged on the lump sum superannuation benefit withdrawn.

27 See also section 10 of the *Superannuation Industry (Supervision) Act 1992* or section 20 of the *Retirement Savings Account Act 1997* which basically reinforce this definition.

28 The Concise Oxford English Dictionary, 7 edition, p. 1027.

29 The Hon Peter Costello MP. Explanatory Memorandum, Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2005. 12 October 2005, p.4.

30 Graeme Selleck, ibid.

31 Graeme Selleck, ibid.

32 Cited in Scott Murdoch, 'Super taxes to stay', *Herald Sun*, 15 October 2005.

33 Ms Jill Hall MP, Deputy Opposition Whip, 'Second reading: Tax Laws Amendment (Superannuation Contributions Splitting) Bill 2005', House of Representatives, *Debates*, 10 November 2005, p. 92.

34 Mr Anthony Albanese MP, Shadow Minister for the Environment and Heritage, Shadow Minister for Water, 'Super contribution Splitting Must Apply to Same Sex Couples' *Media Release*, 10 November 2005; See also Mr Anthony Albanese MP, ibid, 'Second reading: Tax Laws Amendment (Superannuation Contributions Splitting) Bill 2005', House of Representatives, *Debates*, 10 November 2005, p. 96.

35 An ETP's service period is used to determine whether, and in what proportions, these monies are classed as either pre 1983 or post 1983. This determination has a major impact on the taxation of the benefits upon withdrawal. These items ensure that a 'contributions-splitting ETP will only contain post 1983 money.

36 Simon Hoyle, 'Spouse super split: Options and ambiguities', *Australian Financial Review*, 27 July 2002, John Wasiliev, 'Go-ahead for lower surcharge, splitting', *Australian Financial Review*, 13 October 2004, p. 32.

37 Senate Select Committee on Superannuation, *Superannuation and standards of living in retirement - Report on the adequacy of the tax arrangements for superannuation and related policy*, Canberra, December 2002.

38 ibid., p. 106.

39 ibid., p. 107.

40. Simon Kelly, Carol Farbotko and Ann Harding, *The lump sum: here today, gone tomorrow,* AMP/National Centre for Social and Economic Modelling Wealth Report Issue 7, March 2004, p. 6. Significantly, this estimated was based on data from 2003. In 2005 it is likely that more than 20% of retirees have superannuation benefits well over $100 000 in value.

41 Daryl Dixon, 'Split the difference', *Bulletin with Newsweek*, 27 August 2002, p. 45.

42 *Family Law Act 1975* (Cth), s. 90MZG.

43 Again, I am indebted to a previous Bills Digest on the topic of superannuation contribution splitting for material in the preceding section, see Graeme Selleck, 'Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003', Bills Digest No. 59, Parliamentary Library, Canberra, 2003–04 at http://www.aph.gov.au/library/pubs/bd/2003-04/04bd059.htm accessed 18 August 2004.

Warning:

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

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