



- Superannuation (Excess Concessional Contributions Tax) Bill 2006**
- Superannuation (Excess Non-Concessional Contributions Tax) Bill 2006**
- Superannuation (Excess Untaxed Roll-Over Amounts Tax) Bill 2006**
- Superannuation (Departing Australia Superannuation Payments Tax) Bill 2006**
- Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Bill 2006**

Les Nielsen  
Economics Section

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Superannuation (Excess Concessional Contributions Tax) Bill 2006

Superannuation (Excess Non-Concessional Contributions Tax) Bill 2006

Superannuation (Excess Untaxed Roll-Over Amounts Tax) Bill 2006

Superannuation (Departing Australia Superannuation Payments Tax) Bill 2006

Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Bill 2006

**Date introduced:** 7 December 2006

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** 1 July 2007 or Royal Assent.

## Purpose

The following five Bills implement significant tax changes related to the simplification of superannuation package in the Tax Laws Amendment (Simplified Superannuation) Bill 2006. As these Bills each deal with a significant new tax initiative, for constitutional reasons their provisions were not included in the main Bill noted above. These five related bills are:

- Superannuation (Excess Concessional Contributions Tax) Bill 2006
- Superannuation (Excess Non-Concessional Contributions Tax) Bill 2006
- Superannuation (Excess Untaxed Roll-Over Amounts Tax) Bill 2006
- Superannuation (Departing Australia Superannuation Payments Tax) Bill 2006, and
- Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Bill 2006.

## Background

The background to these Bills is contained in the Bills Digest covering the Tax Laws Amendment (Simplified Superannuation) Bill 2006. Both this Digest and the Digest on the five related superannuation Bills should be read together.

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## Basis of policy commitment

Significant changes to the superannuation arrangements were first announced in the Budget speech for the 2006–07 budget.<sup>1</sup> Since then the government has made additional changes to the first announced proposals in response to consultation with both industry and the wider public.<sup>2</sup> These Bills are part of the outcome of these consultations.

## Position of significant interest groups/press commentary

See the [Bills Digest](#) 65, 2006–07 on Tax Laws Amendment (Simplified Superannuation) Bill 2006.

## Pros and cons

See the [Bills Digest](#) 65, 2006–07 on Tax Laws Amendment (Simplified Superannuation) Bill 2006.

## ALP/Australian Democrat/Greens policy positions

See the [Bills Digest](#) 65, 2006–07 on Tax Laws Amendment (Simplified Superannuation) Bill 2006.

## Financial implications

See the [Bills Digest](#) 65, 2006–07 on Tax Laws Amendment (Simplified Superannuation) Bill 2006.

## Main provisions

The following section outlines the main provision of each of these Bills.

### Superannuation (Excess Concessional Contributions Tax) Bill 2006

**Item 4** of this Bill imposes the excess contributions tax payable under **new section 292-15** of the *Income Tax Assessment Act 1997* (ITAA 97). New section 292-15, as well as the other amendments to the ITAA 97 mentioned in this Digest, are inserted by the Tax Laws Amendment (Simplified Superannuation) Bill 2006.

**Item 5** specifies that the rate of this tax is to be 31.5 per cent of a person's excess concessional contributions.

## *Comment*

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New **section 292-25** ITAA 97 defined a ‘concessional’ contribution to be an amount contributed that is part of the assessable income of a superannuation fund plus an amount specified in regulations in certain limited circumstances.

For concessional contributions to be part of the income of a superannuation fund they generally have to be contributions in respect of which a tax deduction has been claimed.

### Superannuation (Excess Non-concessional Contributions Tax) Bill 2006

**Item 4** of this Bill imposes a tax on the excess non-concessional contributions under new **section 292-80** of the ITAA 97.

**Item 5** specifies that the tax rate of the tax imposed by **item 4** is 46.5 per cent.

#### *Comment*

An excess non-concessional contribution is defined in new **section 292-85** of the ITAA 97 to be amounts in excess of the ‘non-concessional contributions cap’. In turn, **subsection 292-85(2)** of this section defined the non-concessional contributions cap as 3 times the ‘concessional contributions cap’. This latter term is defined in **subsection 292-20(2)** as being \$50 000 in the 2007–08 year. This latter limit is to be indexed to changes in Average Weekly Ordinary Time Earnings (AWOTE) in \$5 000 increments. See the Bills Digest for Tax Laws Amendment (Simplified Superannuation) Bill 2006 for additional commentary on proposed indexation method.

### Superannuation (Excess Untaxed Roll-over Amounts Tax) Bill 2006

**Item 4** of this Bill imposes a tax on ‘excess untaxed roll-over amounts under new **section 306-15** of the ITAA 97.

**Item 5** of this Bill specifies that the tax payable is the maximum rate worked out column 3 of the table in Part 1 of Schedule 7 of the *Income Tax Rates Act 1986* in the relevant income year plus 1.5 per cent. Under current tax arrangements, this would give a tax rate of 46.5 per cent.

#### *Comment*

An ‘excess untaxed roll-over amount’ is defined in new **section 306-15** ITAA 97 as:

- the amount of superannuation benefits, previously untaxed in the superannuation fund
- rolled over into a new superannuation fund, that
- exceeds the ‘untaxed plan cap amount’.

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New **section 307-350** defined this later term as \$1m for the 2007–08 year.

This latter limit is to be indexed to changes in Average Weekly Ordinary Time Earnings (AWOTE) in \$5 000 increments. See the Bills Digest for Tax Laws Amendment (Simplified Superannuation) Bill 2006 for additional commentary on proposed indexation method.

### Superannuation (Departing Australia Superannuation Payments Tax) Bill 2006.

A ‘departing Australia superannuation payment’ is made to temporary residents (except New Zealanders) after they have left Australia. It is a refund of their superannuation benefits accumulated through working in Australia.

**Item 4** of this Bill imposes a tax on departing Australian superannuation payments under new **subsection 301-175(2)** of the ITAA 97.

**Item 5** notes that, under the proposed arrangements, the rates of tax are:

- tax free component – nil
- taxed component – 30 per cent, and
- untaxed component – 40 per cent.

#### **Comment**

These rates are no different to the current tax rates applied to departing Australia superannuation payments. Rather, these changes restate the tax rates under the new, simplified, regime.

### Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Bill 2006

**Item 1 of Schedule 1** of the Bill repeals **section 6** of the *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991* and replaces it with a version that deletes any reference to a penalty for the late lodgement for the levy.

#### **Comment**

Self Managed Superannuation Funds (SMSFs) are the fastest growing segment of the superannuation industry. Further, they are the segment of the industry that is attracting increased amount of the Australian Tax Office’s attention.

The Explanatory Memorandum to the Bill notes that the ‘current penalty for the late payment of the supervisory levy is being repealed and replaced by the general taxation

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interest charge' (GIC).<sup>3</sup> The current penalty is \$10 for every month that the supervisory levy remains overdue.<sup>4</sup>

The GIC is set at a high level to encourage the speedy payment of overdue unpaid amounts. Thus the amount of GIC applied to an unpaid SMSF levy could well exceed the former \$10 per month penalty. Thus the proposed changes increase the incentive, and potentially the financial penalty, applying to SMSF trustees who make late payments of this levy.

## Endnotes

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1. The Hon. Peter Costello MP, Treasurer, Second Reading Speech, Appropriation Bill No. 1 2006–07, House of Representatives, *Debates*, 9 May 2006, p. 57.
2. See The Hon. Peter Costello MP, Treasurer, 'A Plan To Simplify and Streamline Superannuation – Transitional Issues That Apply Immediately', *Media Release*, No 57 of 2006, 14 June 2006. Treasury, 'A Plan to Simplify and Streamline Superannuation – Outcome of Consultation', 5 September 2006 and The Hon. Peter Costello MP, 'Simplified Superannuation – Final Decisions', *Media Release*, No 93 of 2006, 5 September 2006.
3. The Hon Peter Costello MP, Treasurer, Explanatory Memorandum to Tax Laws Amendment (Simplified Superannuation) Bill 2006 and Superannuation (Excess Concessional Contributions Tax) Bill 2006, Superannuation (Excess Non-Concessional Contributions Tax) Bill 2006, Superannuation (Excess Untaxed Roll-Over Amounts Tax) Bill 2006, Superannuation (Departing Australia Superannuation Payments Tax) Bill 2006, and the Superannuation (Self-Managed Superannuation Funds) Supervisory Levy Amendment Bill 2006, 7 December 2006, p. 163. This amendment is being made by the Tax Laws Amendment (Simplified Superannuation) Bill 2006.
4. Subregulation 4(2), Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Regulations 1991.

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