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Income Tax Amendment Bill 2007

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Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007

Income Tax Rates Amendment (Superannuation) Bill 2007

Income Tax Amendment Bill 2007

Income Tax (Former Non-resident Superannuation Funds) Amendment Bill 2007

Date introduced: 7 February 2007

House: Representatives

Portfolio: Treasury

Commencement: Immediately after the commencement of the Tax Laws Amendment (Simplified Superannuation) Act 2006

Purpose

The following Bills amend various Acts that impose a tax on superannuation funds. These Bills are:

- Income Tax Rates Amendment (Superannuation) Bill 2007
- Income Tax Amendment Bill 2007
- Income Tax (Former Non-residents Superannuation funds) Amendment Bill 2007, and
- Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007.

Background

The changes made by these Bills are consequential ones flowing from the passage of the Tax Laws Amendment (Simplified Superannuation) Bill 2006 (Main Bill) now before Parliament. As such, the background to these changes is set out in the Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Act 2006 and the Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007.[1]

Basis of policy commitment

These changes were first announced in the Budget speech for the 2006–07 budget.[2] Since then the Government has made significant changes to the first announced proposals in response to consultation with both industry and the wider public. The announcement of these later changes was given in a series of press releases from the Treasurer and Assistant Treasurer and Minister for Revenue during the latter half of 2006.[3]

Position of significant interest groups/press commentary

Press and industry comments on the overall simplified superannuation package are set out in the Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2007.[4]

Pros and cons

Arguments for and against the provisions of the overall superannuation simplification package are set out Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Bill 2006.[5]

ALP/Australian Democrat/Greens/Family First policy position/commitments

Political comments on the overall superannuation simplification package are set out in Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Bill 2006.[6]

Financial implications

There are no financial implications arising from this particular Bill. The financial implications of the overall superannuation simplification package are discussed in the Library's Bills Digest on the Tax Laws Amendment (Simplified Superannuation) Act 2006.[7]

Main provisions

The tax law changes discussed below are contained in separate bills for constitutional reasons.

Income Tax Rates Amendment (Superannuation) Bill 2007 (Rates Bill)

The Rates Bill amends many of the superannuation related provisions of the *Income Tax Rates Act 1986* (Rates Act). These changes are necessary to implement the Simplified Superannuation changes contained in the Main Bill.

Item 6 of **Schedule 1** of the Rates Bill inserts the definition of the term 'employment termination remainder' in to **subsection 3(1)** of the Rates Act.

Under the simplified superannuation changes an 'employment termination remainder' is that amount of an employment termination payment that exceeds the limit(s) on an employment termination payment (see following comment on current limit).

In turn, an 'employment termination payment' is a payment received solely as a consequence of the termination of a person's employment. Such payments will not include superannuation amounts. From 1 July 2007 employment termination payments will refer only to redundancy payments and such additional payments commonly known as golden handshakes.

Under arrangements starting from 9 May 2006 (date of the budget speech in which the simplified superannuation arrangements were first announced) employees in certain circumstances can contribute up to $1 000 000 to a superannuation fund, from an employment termination payment (i.e. golden handshake) and not be assessed as having an employment termination remainder.

Item 7 repeals the current definition of 'ETP' (also employment termination payment) in the Rates Act.

Item 9 amends **subsection 3(1)** of the Rates Bill to define the term 'maximum rate provision' as the provisions, to be inserted in the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997*, by the Main Bill.

The definition of the term 'employment termination remainder' discussed above in **item 6** includes the term 'maximum rate provision'. By defining this term with reference to these other provisions the imposition of the maximum tax rate of 46.5 per cent on the employment termination remainder is ensured.

Item 20 amends the definition of special income component in **subparagraph 3(1)(b)(ii)** of the Rates Act. The current definition is repealed and replaced with a definition referring to the sum of the superannuation remainder of taxable income and the employment termination remainder of taxable income.

The employment termination remainder has already been discussed in **item 6** above. A superannuation remainder of taxable income is defined in **item 22**, which inserts the definition of this term into **subsection 3(1)** of the Rates Act. Briefly, a superannuation remainder is so much of a superannuation payment made to a person from a superannuation fund that:

- is included in their taxable income, and
- does not give rise to a tax offset under the maximum tax rate provisions of new **Division 301** of the *Income Tax Assessment Act 1997.*[8]

Effectively, these amounts are superannuation payments that are still subject to normal tax upon payment from the superannuation fund. That is, they are not taxed at concessional rates upon payment. Under the simplified superannuation changes these amounts will effectively be amounts above $1 million paid from an un-taxed superannuation fund. An un-taxed superannuation fund is one that has not been subject to tax on the contributions to, or the investment earnings of, that fund.

The special income component is taxed at the top marginal rate of 45 per cent plus Medicare levy under the provisions of the Rates Act.

Income Tax Amendment Bill 2007 (Amendment Bill)

Schedule 1 of the Amendment Bill makes consequential amendments to the *Income Tax Act 1986*.

Briefly, **items 3** and **5** of the Amendment Bill ensures that superannuation funds formally taxed under **Part IX** of the *Income Tax Assessment Act 1936* (ITAA 36) will be taxed under the new provisions of the *Income Tax Assessment Act 1997* (ITAA 97).

Generally, **Part IX** of ITAA 36 deals with the taxation of superannuation and related business. Under the simplified superannuation changes the main legislation governing the taxation of these businesses will occur in the ITAA 97.

Income Tax (Former Non-resident Superannuation Funds) Amendment Bill 2007 (Non-residents Bill)

Item 3 of the Non-residents Bill imposes income tax on an entity known as an 'Australian superannuation fund'.

An Australian superannuation fund is a fund, formerly known as a 'resident superannuation fund'. The definition of an Australian superannuation fund is to be inserted into the ITAA 97 in new **section 295-95** of that Act (**Item 1**, **Schedule 1**, Main Bill). **Item 3** of the Amendment Bill is necessary to ensure that the tax arrangements included in the simplified superannuation changes apply to the new category of 'Australian superannuation fund.

Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007

The Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007 makes consequential amendments to the *Income Tax (Former Complying Superannuation Funds) Act 1994*.

Item 1 amends this Act so that such funds are now taxed under the provisions of the ITAA 97 instead of **Part IX** of the ITAA 36. Such changes are required to ensure consistent tax treatment with other superannuation funds under the simplified superannuation changes.

Concluding Comments

These changes are necessary for the complete implementation of the simplified superannuation package.

Endnotes

1. Leslie Nielson, 'Tax Laws Amendment (Simplified Superannuation) Bill 2006' *Bills Digest*, no. 65, Parliamentary Library, Canberra, 200607. and 'Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2007', *Bills Digest*, no. 91, Parliamentary Library, Canberra, 2006–07.
2. The Hon. Peter Costello MP, Treasurer, Second Reading Speech, Appropriation Bill No. 1 2006–07, House of Representatives, Debates, 9 May 2006, p. 57.
3. Treasury, *A Plan to Simplify and Streamline Superannuation - Detailed Outline*, 9 May 2006, *A Plan to Simplify and Streamline Superannuation – Outcome of Consultation,* 5 September 2006, The Hon. Peter Costello MP, 'A Plan To Simplify and Streamline Superannuation – Transitional Issues That Apply Immediately', Media Release, No 57 of 2006, 14 June 2006.'Simplified Superannuation – Final Decisions', Media Release, No 93 of 2006, 5 September 2006.
4. Leslie Nielson, ibid.
5. Leslie Nielson, 'Tax Laws Amendment (Simplified Superannuation) Bill 2006' *Bills Digest*, no. 65, Parliamentary Library, Canberra, 2006–07.
6. Leslie Nielson, ibid.
7. Leslie Nielson, ibid.
8. These new sections are 301-95, 301-105 and 301-115 of the *Income Tax Assessment Act 1997*, inserted by the provisions of the Main Bill.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2495.