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Committee Secretary
Senate Economics Committee
Department of the Senate
PO BOx 6100
Parliament House
CANBERRA ACT 2600

24 January 2007

Dear Sir or Madam

Further Submission on Tax Laws Amendment (Simplified Superannuation) Bill 2006

Further to our letter dated 11 January 2007, PricewaterhouseCoopers would like to make a further submission to the Committee in relation to an issue arising from the Tax Laws Amendment (Simplified Superannuation) Bill 2006 issued on 7 December 2006. We understand that the stated deadline for submissions has recently passed, however due to the Christmas/New Year holidays and the fact that many people have been away on leave and extremely busy in the lead up to the holiday period, we hope that you will exercise discretion and accept this late submission and afford it treatment as having been timely lodged.

We also request that this submission be considered in conjunction with our comments made in our earlier letter of 11 January 2007, as this submission also relates to the transfer of benefits into Australia from overseas superannuation funds. In particular, this submission relates to Section 292-80A (4) of the above-mentioned Bill ("the Bill"), which relates to the "Transitional Release Authority", and imposes a deadline of 6 December 2006 for non-concessional contributions to be accepted by an Australian fund, and withdrawal of such contributions by 30 June 2007 without penalty. In particular, Section 292-80A states that:-

> "For the purposes of this section, disregard contributions made in respect of the person after 6 December 2006 in working out:
>
> (a) whether the person has excess non-concessional contributions as mentioned in subsection (2), and
> (b) the amount of those excess non-concessional contributions."

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Issue

We understand from this section that, where a taxpayer has contributed amounts to an Australian complying superannuation fund during the period 10 May 2006 to 6 December 2006, which are "undeducted contributions", and these amounts are in excess of the $1 million transitional amount allowed for the year ending 30 June 2007, the amount in excess of $1 million may be withdrawn from the fund, without penalty, by 30 June 2007, where the taxpayer follows the directions for application to the Commissioner of Taxation as set out in the draft Bill.

However, the above section, and related commentary on the ATO website, indicates that, where amounts are contributed to the fund between 6 December 2006 and 30 June 2007, the taxpayer will not be able to withdraw the excess "non-concessional" amounts by 30 June 2007, and any such amounts will be subject to tax at the top marginal tax rate, i.e. 46.5%.

The unanticipated introduction of a deadline of 6 December 2006 is causing considerable concern and hardship to those taxpayers who are in the process of transferring benefits from overseas superannuation funds to Australian funds, but who had not completed the transaction prior to the 6 December 2006 date announced in the Bill.

In particular, we submit that:-

- The introduction of this deadline of 6 December 2006 is completely opposite to the statement made by the Treasurer on 5 September 2006, only 3 months before the Bill was published, in the paper "A Plan to Simplify and Streamline Superannuation – Outcomes of Consultation"; The statement by the Treasurer was that **"Individuals who make contributions in excess of the transitional limits outlined below will be able to withdraw these amounts without penalty prior to 1 July 2007".**
- Many taxpayers have been acting in good faith on the above statement, with the anticipation that such transactions may occur up to 30 June 2007, without penalty, thus allowing them to structure their affairs in accordance with the proposals;
- The introduction of any deadline prior to 30 June 2007 was not anticipated nor expected;
- Many taxpayers have been waiting on final legislation before taking action as changes can occur in the final legislation which may impact their decisions; those people who have waited for such final legislation are therefore now adversely affected and

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disadvantaged as opposed to those who have acted immediately on the basis of *proposed* changes;

- There should be acknowledgement and encouragement for those taxpayers who have worked overseas and accumulated retirement benefits over a number of years in a foreign jurisdiction, to repatriate their funds to Australia, without penalty;
- Such taxpayers who have not, or have not yet been able to, transfer their accumulated offshore benefits to Australia will most likely no longer do so due to the severe financial penalty being imposed;
- There should be a distinction in the thresholds set for concessional contributions to Australian superannuation funds between those additional contributions being made by Australian residents to top up their existing superannuation benefits versus benefits that have been accumulated over a period of time while working in a foreign location.

We have set out below our request for consideration by the Committee in relation to this matter, and our background comments supporting our submission.

Recommendation

In accordance with the Treasurer's announcement on 5 September 2006 "A Plan to Simplify and Streamline Superannuation – Outcomes of Consultation", we request that the Bill be amended to ***remove the deadline of 6 December 2006*** for "undeducted contributions" made in excess of $1 million, and to reinstate the deadline of 30 June 2007 for all "undeducted contributions" made between 10 May 2006 and 30 June 2007, allowing all taxpayers equally the ability to restructure their superannuation arrangements in accordance with the new proposals.

Discussion commentary

We welcome and support the Government's review of superannuation arrangements in Australia and generally agree with most of the proposals included in the Bill. However, as noted in our submission of 11 January 2007, we believe that further consideration needs to be given to the tax treatment of transfers of superannuation contributions from overseas superannuation funds.

In particular, as has been noted in the media on several occasions recently, there is acknowledgement that there are a large number of Australians currently residing overseas (approximately one million according to many media reports), and that the Government is keen to

attract such talent to return to Australia. It is also broadly acknowledged that many such Australians currently working overseas will in fact return to Australia to ultimately retire. We understand that the Government wishes to encourage such Australians (and other foreign retirees to Australia) to bring their accumulated retirement savings with them and to invest such monies in Australia.

This will not be achieved where the taxpayers will incur a significant financial penalty by transferring their superannuation benefits to Australia.

Whilst working overseas for a number of years, a significant number of such taxpayers will have accumulated benefits well in excess of $150,000/$450,000 or $1 million during their overseas working lifetime. The total amount of their benefits has typically been accumulated through an annual combination of employer and employee contributions in accordance with the laws of the country/countries where they reside. It is primarily for this reason that we believe that there should be a distinction in the legislation between the amounts allowed to be contributed, without penalty, for taxpayers repatriating overseas superannuation benefits and the amount allowed for Australian residents wishing to supplement their Australian employer contributions.

A number of such Australians who are currently residing overseas but who are expecting to return to Australia in the foreseeable future, and had been expecting to repatriate their accumulated superannuation benefits, have been considering their options in light of the proposed simplification announcements and are in the process of making arrangements to transfer their accumulated benefits to Australia. Many such people however have not been in a position to transfer their benefits until they have actually returned to Australia and have left their country of current residence, or have been waiting for the legislation to be finalised prior to making their final decisions and arrangements.

The Treasurer's published statement in the paper issued on 5 September 2006 (as referred to above), states **"Individuals who make contributions in excess of the transitional limits outlined below will be able to withdraw these amounts without penalty prior to 1 July 2007".**

Given the proposed low threshold for future contributions/transfers from overseas funds, many taxpayers who are in the process of returning to Australia to reside need to utilise the transitional arrangements to repatriate their accumulated benefits, and many such taxpayers have been making appropriate arrangements to do so. On the basis of the above statement by the Treasurer,

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it was broadly accepted that such taxpayers would have until 30 June 2007 to make their arrangements to transfer their benefits and would be able to withdraw the excess amounts up to 30 June 2007 without penalty.

The Bill as discussed above has unexpectedly introduced a retrospective deadline of 6 December 2006, which now makes it extremely unattractive for those taxpayers to continue to repatriate their funds as they will incur a tax bill of 46.5% on any amounts in excess of $1 million as the funds will be received by the Australian superannuation fund after 6 December 2006, thus significantly reducing their available retirement benefits as at 30 June 2007. Unless the Bill is amended to remove this 6 December 2006 deadline, such taxpayers will elect to leave their benefits offshore and will not repatriate those funds until such time as they actually retire and are required to draw on the funds.

If the 6 December 2006 deadline is removed, and the expected original deadline of 30 June 2007 reinstated, this will allow these taxpayers to continue with their planned arrangements to transfer their benefits and will allow such monies to be invested in Australia, potentially generating ongoing investment and tax revenue.

We hope that you will therefore favourably consider our above recommendation to remove the 6 December 2006 deadline and reinstate the 30 June 2007 deadline originally anticipated.

Should you wish to discuss any of the matters raised in this letter, please do not hesitate to contact me on (02) 8266 8120 or Helen Cudlipp on (02) 8266 2995.

Kind regards

Yours faithfully

John Fauvet
Partner
Tax and Legal Services