

# Chapter 4

## The remaining schedules of the bill

### Schedule 3 – Exempt annuity business of life insurance companies

4.1 The amendments proposed in Schedule 3 of the bill are intended to clarify the operation of the existing law.

4.2 The need for these amendments arose as a result of the transfer of the provisions from the ITAA 1936 to the ITAA 1997 and subsequent changes that were made under the Simplified Superannuation amendments in 2007-08. These events have raised questions about the interpretation of the provisions.<sup>1</sup>

4.3 The proposed changes will ensure that the law clearly identifies those situations where annuity income<sup>2</sup> derived by life insurance companies will be classified as non-assessable non-exempt income.<sup>3</sup>

4.4 The explanatory memorandum to the bill explains that the income derived by life insurance companies from immediate annuity business should be exempt from tax to prevent double taxation given that the policy holder of the annuity will be taxed on any annuity income they receive.<sup>4</sup>

4.5 The changes proposed by Schedule 3 are designed to operate retrospectively:

- the amendments retrospective to 1 July 2000 are designed to correct the provisions that were drafted to update and replace those of the ITAA 1936 to ensure that they operate consistently with the former provisions;<sup>5</sup> and

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1 Explanatory Memorandum, p. 67.

2 According to section 995-1 of the ITAA 1997, the term annuity is defined as including an annuity within the meaning of the *Superannuation Industry (Supervision) Act 1993* (the SISA defines annuity as including a benefit provided by a life insurance company or registered organisation); or a pension, within the meaning of the *Retirement Saving Accounts Act 1997*.

3 Non-assessable non-exempt income is defined in section 6-23 of the ITAA 1997 as being: an amount of ordinary or statutory income that this Act or another Commonwealth law states is not assessable income and it is not exempt income.

4 Explanatory Memorandum, para 3.3, p. 67.

5 Explanatory Memorandum, p. 68.

- the amendments retrospective to 1 July 2007 will ensure that the annuity conditions<sup>6</sup> do not apply to annuity policies that are superannuation income streams.<sup>7</sup>

### ***Views on Schedule 3 – exempt annuity business***

4.6 Division 320 of the ITAA 1997 specifies the tax treatment of life insurance companies containing provisions to ensure that their tax treatment is comparable to that of other providers of superannuation income streams.

4.7 The changes proposed by Schedule 3 of the bill propose amendments to subdivision 320-H (Segregation of assets to discharge exempt life insurance policy liabilities) designed to ensure:

- (i) that the non-assessable non-exempt income of life insurance companies includes income from assets supporting immediate annuity policies; and
- (ii) that the annuity conditions will not apply to immediate annuity policies of life insurance companies where those annuities are superannuation streams.<sup>8</sup>

4.8 These changes were announced by the Assistant Treasurer and Minister for Competition and Consumer Affairs, the Hon. Chris Bowen MP, on 12 May 2009.<sup>9</sup>

4.9 None of the ten submissions mentioned the amendments proposed by Schedule 3.

### **Recommendation 3**

**After consideration of the proposed operation of the amendments and the government's policy intent, the committee recommends the Senate pass Schedule 3 without amendment.**

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6 Annuity conditions are designed to prevent excessive deferral of tax on income derived by life insurance companies that relate to immediate annuity policies – Explanatory Memorandum, para 3.26, p. 72.

7 The Hon Chris Bowen MP, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Media Release No. 092, 31 October 2008.

8 Treasury Discussion Paper, Life insurance companies: Exempt life insurance policies, 2009, p. 1.

9 Treasury Discussion Paper, Life insurance companies: Exempt life insurance policies, 2009, p. 1.

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## Schedule 4 – Deductible gift recipients

4.10 Schedule 4 of the bill provides for the addition of two organisations to the list of deductible gift recipients (DGRs) and a change in the name of one organisation already included as a DGR.<sup>10</sup>

4.11 The income tax law allows taxpayers to claim income tax deductions for gifts of \$2 or more that are made to a DGR. The ITAA 1997 provides a list of DGR organisations in section 30-15.<sup>11</sup>

4.12 The inclusion of an organisation on the DGR list encourages support by offering tax deductions to those making donations.<sup>12</sup>

4.13 The two funds to be added to the DGR list are The Green Institute Limited, and United States Studies Centre Limited.<sup>13</sup>

4.14 The Green Institute Limited aims to engender 'education, exchange, research and debate' on:

the principles of environment, social justice, non-violence and democracy. The key aim of the Green Institute is to promote those principles through training, networking, and research and policy development.<sup>14</sup>

4.15 The date of effect has been made retrospective to 24 June 2009; special conditions attached to the amendments provide that gifts made to this organisation after 23 June 2009 may be claimed as a deduction.<sup>15</sup>

4.16 The United States Studies Centre Limited is an organisation which aims to promote relations between the peoples of the United States, Australia and New Zealand through cultural awareness. Section 4.7 of the Explanatory Memorandum states that the aim of the fund is to:

[r]esearch, debate and create new knowledge on American political, economic, social and cultural issues.<sup>16</sup>

4.17 The inclusion of the United States Studies Centre Limited on the list has also been made retrospective to 27 July 2009, thereby allowing gifts made to the fund after 26 July 2009 to be claimed as a tax deduction.<sup>17</sup>

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10 Explanatory Memorandum, p. 77.

11 Explanatory Memorandum, p. 77.

12 Explanatory Memorandum, p. 77.

13 Explanatory Memorandum, p. 78.

14 Explanatory Memorandum, para 4.6, p. 78.

15 Explanatory Memorandum, Table 4.1, p. 78.

16 Explanatory Memorandum, para 4.7, p. 78.

17 Explanatory Memorandum, Table 4.1, p. 78.

4.18 Schedule 4 amendments also propose that the name of the Dymocks Literacy Foundation Fund Limited, an existing education DGR, be changed to the Dymocks Children's Charities Fund, with the effect date 4 June 2009.<sup>18</sup>

4.19 Division 30 of the ITAA 1997 sets out the rules for deductions for certain gifts and contributions.

*Committee comment*

4.20 No submissions raised concerns or made comment in respect of Schedule 4.

**Recommendation 4**

**The committee recommends the Senate pass Schedule 4 without amendment.**

**Schedule 5 – Income Recovery Subsidy for the North Western Queensland floods**

4.21 Schedule 5 makes provision for the Income Recovery Subsidy for the North Western Queensland floods to be exempt from income tax and kept apart from 'separate net income'.<sup>19</sup> The amendment will ensure that the law expressly states that this particular subsidy is exempt from income tax.

4.22 The subsidy was an emergency measure made available to Australian residents over 16 years of age whose income was adversely and directly affected by the North Western Queensland floods of January and February 2009. It formed part of a raft of measures such as services, payments and assistance that were already available to those taxpayers affected by the flooding.<sup>20</sup>

4.23 The payment was available to be claimed by victims of the floods after 24 February 2009. As a result, the income tax exemption proposed by Schedule 5 will be retrospective, the change effective from the 2008-09 income year.<sup>21</sup>

4.24 The amendment intends to lessen financial hardship.<sup>22</sup>

4.25 Submissions received to this inquiry did not comment on the changes proposed by Schedule 5.

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18 Explanatory Memorandum, Table 4.2, p. 78.

19 Including the payment in the calculation of separate net income may adversely impact the ability of these same taxpayers to access other tax offsets.

20 Explanatory Memorandum, p. 79.

21 Explanatory Memorandum, p. 81.

22 Explanatory Memorandum, paras 5.6 – 5.7, p. 79.

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## **Recommendation 5**

**The committee recommends the Senate pass Schedule 5 without amendment.**

### **Schedule 6 – Excise manufacture and spirits**

4.26 Schedule 6 of the bill proposes amending the *Excise Act 1901* to ensure that the blending of imported and domestic high strength neutral spirits constitutes 'excise manufacture'. This will ensure that high strength neutral spirits are imported at a free rate of duty under the *Excise Tariff Act 1921* concessional spirits regime.<sup>23</sup>

4.27 The concessional regime ensures that in those circumstances where particular spirits are imported for specified industrial, manufacturing, scientific, medical, veterinary or educational purposes, they are free of duty.

4.28 The amendment proposed is required as although the Excise Act contains provision to deem the blending of fuel to constitute excise manufacture, there is no equivalent provision for the blending of high strength neutral spirits.<sup>24</sup>

4.29 In the absence of the deeming provision, importers rely on an alternative method to ensure that the spirit is essentially free from duty.<sup>25</sup>

4.30 Schedule 6 will also provide the Commissioner of Taxation with the discretion to make determinations exempting certain activities from constituting excise manufacture.<sup>26</sup>

4.31 The amendments, if passed, will commence from the date of Royal Assent.<sup>27</sup>

### ***Views on Schedule 6 – Excise manufacture and spirits***

4.32 As explained, Schedule 6 of the bill will introduce an addition to the *Excise Act 1901* to address a current legislative deficiency and ensure that imported high strength neutral spirits that are imported for specific purposes fall within the concessional spirits regime of the *Excise Tariff Act 1921*.

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23 Explanatory Memorandum, p. 83.

24 Explanatory Memorandum, para 6.6, p. 84.

25 Importers mix the imported high strength neutral spirit with domestic stocks – this transfers the spirit into the excise system and extinguishes any customs liability with the exception of any value component that is required to be paid at the time of a transaction. Explanatory Memorandum, para 6.5, p. 83.

26 Explanatory Memorandum, para 6.8, p. 84.

27 Explanatory Memorandum, para 6.10, p. 85.

4.33 The submissions received did not refer to Schedule 6.

**Recommendation 6**

**After consideration of the proposed amendment, the committee recommends the Senate pass Schedule 6 without amendment.**

**Senator Annette Hurley**

Chair