Australian Institute of Superannuation Trustees

8 May 2013

The Manager
Contributions and Accumulation Unit
Personal Retirement and Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: superannuation2013bill@treasury.gov.au

Dear Sir/Madam,

Re: Sustaining the Superannuation Contribution Concession

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's $500 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST notes that superannuation is designed to be a concessionally-taxed environment which also has concessions that apply to certain types of contributions. Part of the reason for allowing tax concessions to apply to certain contributions into the superannuation system is to ensure that money that is not received by Australians in their hand are taxed at a lesser rate to compensate for the monies not being available until retirement.

The current flat tax regime makes all eligible for a percentage-based tax concession on contributions – which means that those who could ordinarily afford to save for their retirement independently of those concessions would be eligible for greater tax concessions, depending on their earnings.

We recognise that this measure goes hand in glove with the lower income superannuation concession (LISC), a point that the explanatory memorandum (EM) acknowledges at paragraph 1.12. The LISC corrects the historical inequity of lower paid Australians being taxed at a higher rate on their superannuation contributions than the income that they receive in hand.

Individual assessment

We support the additional tax on contributions being assessed on taxpayers individually. We also support the arrangement whereby individuals have the choice as to paying for any amounts owing from either non-super, or superannuation monies. We note that any alternative arrangements involving amendments to the rate of taxation in superannuation would result in administration difficulties at super funds, for example, where a person is a member of more than one fund, and this we could not support this for that reason .

Ground Floor
215 Spring St
Melbourne VIC 3000

T +61 3 8677 3800
F +61 3 8677 3801

info@aist.asn.au
www.aist.asn.au

Obligations on members in the first instance

We have been made aware that the situation could arise where a member of a superannuation fund, by virtue of situations including, for example, total and permanent disablement, may not have the funds available to pay an outstanding tax bill from either their super or non-super monies. Whilst we consider that these cases will very much be the exception, rather than the rule, we highlight this as a risk.

Similarly to this, we note that in the case of death benefits, it is rare that an amount will be released by trustees to a member's estate. Where a member dies, we note that the tax debt related to proposed division 293 will be passed to the member's estate, however if the member holds no other assets, this will be unable to be paid. In cases where the estate does hold additional assets and these assets are to pass to alternative beneficiaries, this appears to be a tax to be, in effect, collected from estate beneficiaries, rather than the beneficiaries of a superannuation death benefit. We offer no comment on this, other than to highlight it as a risk.

Conflicts with family law and contribution splitting

We are concerned at how well this measure will work in conjunction with family law actions, specifically splitting and flagging orders.

In the case of splitting orders, we are uncertain about the equity of allowing an interest to be split, but to leave a tax bill covering a period prior to the split in the hands of one of the parties. We believe that this problem should be examined.

Related to this is the issue of contribution splitting. We are uncertain whether an unintended consequence of the draft legislation may see contribution splitting requests made in order to avoid tax liabilities.

In the case of a flagging order, we are uncertain as to even in the present situation about whether a trustee is able to comply with a release authority in situations where there is a payment flag on the member's account.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au .

Yours sincerely,

Tom Garcia
Chief Executive Officer