

From: s 22
To: [REDACTED]
Cc:
Subject: FW: Taxation of Federal Government CSS/PSS Pensions [SEC=OFFICIAL]
Date: Tuesday, 8 February 2022 10:44:00 AM

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I used these points in a previous email last year internally and may help solidify some of the things we discussed this morning.

As mentioned we do have a long response that covers most of this ground, however it would be covering most if not all of the same territory covered in previous responses to SCOA.

Let me know if you need anything else.

Regards

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Employer pays actual contribution into fund/scheme

Fund/scheme includes that employer contribution in their assessable income (Div295 ITAA97)

Fund/scheme applies to APRA for a funding credit (s.342 SISA93)

APRA approves a credit, that reduces the fund/scheme's assessable contributions (s.295-265 ITAA97)

(or the fund/scheme claims a pre-approval credit under s.295-270 ITAA97)

Before 1/7/88 certain funds/schemes were tax exempt

Since 1/7/88 s.295-5 makes these funds/schemes taxed

Except Constitutionally Protected Funds under s.50-25 (item 5.3) and ITAR r.995-1.04 (Sch4)

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The effect of a pre-1/7/88 funding credit is to ensure that the previously exempt fund/scheme does not pay tax on an employer contribution used to finance a pre-1/7/88 accrued benefit, and therefore not have that fund tax being borne by the member.

Where pre-1/7/88 unfunded accrued benefits are financed directly from Consolidated Revenue there is never any contribution from an employer into a taxed fund and never any assessable contribution, so there is no entitlement (or need) for a pre-1/7/88 funding credit.

Untaxed elements are taxed in the member's hands (in their assessable income) because there has not been any tax paid previously on the monies that are financing the amount paid out as a benefit (either by the fund/scheme or the member). In some cases, despite there being no pure tax reason for it, members receive a taxation offset on this untaxed element.

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Where funds/schemes do actually funnel the benefit payments through the fund/scheme just before making the benefit payments (otherwise known as last minute contributions) there is also an election that fund/scheme trustees can take advantage of to avoid the employer contribution being taxed in the fund/scheme before being paid out.

However if the fund/scheme did not use that election they would be entitled, to the extent they are financing a pre-1/7/88 accrued benefit, to apply for a pre-1/7/88 funding credit.

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[REDACTED] there are no Commonwealth 'unfunded' schemes where any actual employer contributions are funnelled through the fund/scheme before financing the pre-1/7/88 accrued benefits of members. Therefore, no entitlement (or need) to claim such credits.

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There are other anomalies in the taxation of individuals with unfunded / untaxed benefits,

namely the inclusion of notional unfunded employer contributions in the individual's concessional cap calculation and the actual taxation of these notional amounts through Div293 tax.

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On some of the other points:

Member's own contributions, which are after-tax contributions, form part of a member's tax-free component, and are not taxed again in the member's hands. Nor do these amounts form part of the member's assessable income (NANE).

If funds/schemes in the State/Territory public sector are claiming pre-1/7/88 funding credits then that must be because they are actually making last minute contributions into those funds/schemes before making benefit payments. If they are not doing this then they are potentially not claiming those credits correctly, however this is a matter for the ATO, s 22

There are no equity issues at play here. The credits, where claimed correctly, merely ensure that pre-1/7/88 accrued benefit financing remains tax exempt.

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