

CORPORATE SUPER ASSOCIATION

The Manager
Superannuation Unit
The Treasury
Langton Crescent
Parkes ACT 2600

23 October 2003

By e-mail to superannuation@treasury.gov.au

Dear Sir

DRAFT SUPERANNUATION SPLITTING REGULATIONS

I refer to the Media Release issued by the Minister for Revenue and Assistant Treasurer on 14 October 2003, inviting public comment on draft Regulations relating to implementation of the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 ("the Bill"). The Corporate Superannuation Association wishes to provide comments as below.

The Corporate Super Association

The Corporate Super Association is Australia's representative body for major Not For Profit corporate superannuation funds and their corporate sponsors.

The assets of Association members amount to approximately \$60 billion, representing about 75% of total corporate superannuation sector assets in Australia and some 750,000 individual employee fund members.

Splitting of contributions – points of support

We support the principle of building the superannuation assets of spouses who work at home or who receive a low income.

We note also that the approach proposed in the Bill, involving an annual split of contributions, is likely to pose fewer problems for funds than the alternative methods of contribution splitting during the accumulation phase put forward during the discussion phase for these measures. We note the Government's commitment to making the split during the accumulation phase rather than at the time when the benefits are due for payment.

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Splitting of contributions – points of concern

Administration costs for superannuation funds

Given the Government's commitment to providing the facility to split contributions, we are concerned that this should be achieved with minimum cost impact. Additional reporting requirements should be minimised. We note, for example, that section 27HA imposes the requirement to report information to the Commissioner of Taxation annually about split contributions. Proposed Income Tax Regulation 99C imposes requirements to provide detailed reporting of contribution splits to the Australian Taxation Office. If the contribution split is equivalent for tax purposes to a roll-over of benefits, it may be sufficient for the reporting requirements to follow the model applicable to rollovers, without further separate requirements.

Contributions eligible for splitting

The explanatory material accompanying the proposed amendments to the Superannuation Industry (Supervision) Regulations states that the proposed regulations will only apply to superannuation fund members who hold only an accumulation interest in a fund.

A point which has been raised by our members is that there could be members in the above category for whom the regulations, in their proposed form, will not achieve the objective. These are members who hold only an accumulation interest in a fund, but in respect of whom the employer does not need to make contributions in the current year because there is an overall surplus in the fund. The accumulation accounts of such members are credited with an amount each year representing a transfer from surplus.

The superannuation "surcharge" legislation recognises the value of such support by requiring it to be included in the definition of "surchargeable contributions" under paragraph 8(2)(d) of the Superannuation Contributions Tax (Assessment and Collection) Act 1997. The Superannuation Guarantee legislation also recognises the value of employer support in such a situation, by including it in the definition of the "notional employer contribution rate" under subsection 10(2) of the Superannuation Guarantee (Administration) Act 1992.

The regulations in their current draft permit only "deductible contributions" (subject to a maximum percentage) and undeducted contributions to be split: see draft regulations 6.43 and 6.44. A "deductible contribution" is defined at draft SIS Regulation 6.41 as a contribution which is deductible under the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997.

We believe that it would be helpful to amend the proposed regulations to allow for the transfer of amounts referred to at paragraph 8(2)(d) of the Superannuation Contributions (Assessment and Collection) Act 1997 (subject to an appropriate limit which allows for surcharge liability).

Please give me a call on (03) 9650 9371 or on (03) 9504 8399 if you have any questions about the above.

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Yours faithfully

Elizabeth Goddard
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Corporate Superannuation Association