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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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SUPERANNUATION LEGISLATION AMENDMENT (SIMPLIFICATION)  
BILL 2007  
INCOME TAX AMENDMENT BILL 2007  
INCOME TAX (FORMER COMPLYING SUPERANNUATION FUNDS)  
AMENDMENT BILL 2007  
INCOME TAX (FORMER NON-RESIDENT SUPERANNUATION FUNDS)  
AMENDMENT BILL 2007  
INCOME TAX RATES AMENDMENT (SUPERANNUATION) BILL 2007

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EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Treasurer, the Hon Peter Costello MP)

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# Glossary

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
APRA	Australian Prudential Regulation Authority
asterisk (*)	refers to sections of the ITAA 1997 that are to be created by the main Bill
ATO	Australian Taxation Office
CGT	capital gains tax
Commissioner	Commissioner of Taxation
ETP	eligible termination payment
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
main Bill	Tax Laws Amendment (Simplified Superannuation) Bill 2006
RBL	reasonable benefit limit
RSA	retirement savings account
SG	superannuation guarantee
TAA 1953	<i>Taxation Administration Act 1953</i>
TFN	tax file number
this Bill	Superannuation Legislation Amendment (Simplification) Bill 2007

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# **General outline and financial impact**

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## ***Simplified Superannuation* reforms — consequential and other amendments**

On 7 December 2006 the Tax Laws Amendment (Simplified Superannuation) Bill 2006 (main Bill) and supporting Bills, which implement the key elements of *Simplified Superannuation*, were introduced into Parliament.

*Simplified Superannuation* seeks to simplify the current raft of complex tax arrangements and remove restrictions that apply to superannuation benefits. It aims to provide retirees with greater flexibility as to how and when they draw down their superannuation benefits.

In addition to implementing *Simplified Superannuation*, the main Bill rewrites superannuation taxation provisions from the *Income Tax Assessment Act 1936* (ITAA 1936) into the *Income Tax Assessment Act 1997* (ITAA 1997). Consolidating these provisions will provide a clearer picture of the taxation treatment of superannuation savings across the phases of the superannuation investment: when the money is contributed; during the investment phase; and at the benefit payment phase. It is drafted in a contemporary and consistent style and will cut the number of superannuation related pages in the income tax assessment Acts by over a third.

The Superannuation Legislation Amendment (Simplification) Bill 2007 (this Bill) and companion Bills are related Bills to the main Bill. This Bill makes:

- consequential amendments necessary due to the rewrite of the superannuation taxation law (such as the repeal of the old law and updating references to the old law contained in various Acts);
- minor additions to the law giving effect to the *Simplified Superannuation* reforms; and
- amendments to enable future flows of unclaimed superannuation monies to be paid to the Australian Government.

Schedule 1 to this Bill contains consequential amendments including the repeal of the old superannuation taxation law in the ITAA 1936.

Schedule 2 contains other consequential amendments relating to small business relief for capital gains tax (CGT) events.

Schedule 3 contains minor additions to the law created by the *Simplified Superannuation* reforms. It also provides for future flows of unclaimed superannuation monies from private sector superannuation funds to be paid to the Australian Government. The amendments will assist the Australian Taxation Office (ATO) in establishing a single access point for lost and unclaimed superannuation and a simpler nationalised claims process going forward. As a result, individuals will be able to seek advice directly from the ATO on any superannuation-related issue, without having to contact numerous government agencies.

Schedule 4 contains technical corrections.

The Income Tax Amendment Bill 2007 makes consequential amendments to the *Income Tax Act 1986*. The Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007 makes consequential amendments to the *Income Tax (Former Complying Superannuation Funds) Act 1994*. The Income Tax (Former Non-resident Superannuation Funds) Amendment Bill 2007 makes consequential amendments to the *Income Tax (Former Non-resident Superannuation Funds) Act 1994*. The Income Tax Rates Amendment (Superannuation) Bill 2007 makes consequential amendments to the *Income Tax Rates Act 1986*. Each of these Bills deals with a separate object of taxation.

**Date of effect:** *Simplified Superannuation* commences on 1 July 2007. The revised age pension arrangements commence on 20 September 2007.

**Proposal announced:** The proposals were released for community consultation on 9 May 2006 in *A Plan to Simplify and Streamline Superannuation*. The Government's final decisions were announced on 5 September 2006 in Press Release No. 93, issued jointly by the Treasurer and the Minister for Revenue and Assistant Treasurer. On 7 December 2006 in Press Release No. 131, issued jointly by the Treasurer and Minister for Revenue and Assistant Treasurer, it was announced that the *Simplified Superannuation* legislation had been introduced into Parliament.

***Financial impact, compliance cost impact and regulation impact statement:*** The financial impact, compliance cost impact and regulation impact statement associated with the *Simplified Superannuation* reforms are contained in the explanatory memorandum to the main Bill. The consequential amendments in this Bill have no impact on the financial and compliance costs identified in the explanatory memorandum to the main Bill.

## Summary of following chapters

The following chapters group amendments based on whether they relate to the rewrite of the taxation rules regarding:

- contribution rules (Chapter 1);
- the taxation of superannuation benefit payments or employment termination payments (Chapter 2);
- the taxation of superannuation entities (Chapter 3); and
- other changes, such as those made to arrangements for self-managed superannuation funds or unclaimed superannuation money (Chapter 4).

This grouping of amendments is broadly similar to that of the explanatory memorandum to the main Bill and should assist in providing readers with a complete picture of changes made to a particular area of superannuation taxation and in understanding the relationship between the amendments in this Bill and the main Bill.

Within each chapter, amendments are split into additions to the law created by the main Bill and consequential amendments contained in this Bill (including repeals of old law and updates to legislative references to the old law).

All references in this explanatory memorandum to sections of the ITAA 1997 that are to be created by the main Bill are denoted by an asterisk (\*).

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# Chapter 1

## Contributions rules

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### Outline of chapter

1.1 This chapter outlines minor additions made to the law to clarify or complement the operation of the contribution rules in the Tax Laws Amendment (Simplified Superannuation) Bill 2006 (main Bill), including the superannuation contribution deduction rules and the rules relating to the caps on superannuation contributions.

1.2 For example, it outlines transitional deduction arrangements for employers and individuals with substituted accounting periods, and the extension of transitional arrangements for exemptions from the non-concessional contributions cap for contributions related to personal injury payments and capital gains tax (CGT) events.

1.3 It also covers the repeal of the old superannuation contribution rules in the *Income Tax Assessment Act 1936* (ITAA 1936). Updates to references to the repealed law in other Acts are also outlined.

### Additions to the law created by the main Bill

#### Deductions for superannuation contributions

##### *Employees engaged in research and development activities*

1.4 This Bill inserts a new subsection 73B(20A) into the ITAA 1936 to make it clear that an eligible company is able to claim a tax deduction for superannuation contributions for employees engaged in research and development activities under section 73B rather than section 290-60\*<sup>1</sup> of the *Income Tax Assessment Act 1997* (ITAA 1997). The conditions in section 290-60\* (eg, the contribution is made to a complying superannuation fund) still apply to the contribution. A change is made to the note to subsection 290-60(1)\* to clarify the deduction is provided for under section 73B and not merely increased by subsection 73B(14).  
*[Schedule 1, items 74, 76 and 206, subsection 73B(1) (definition of ‘contributions to superannuation funds’), subsection 73B(20A) of the ITAA 1936 and subsection 290-60(1) (Note) of the ITAA 1997]*

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<sup>1</sup> Asterisk \* refers to sections of the ITAA 1997 that are to be created by the main Bill.

### ***Contributions for former employees***

1.5 Section 290-85\* of the ITAA 1997 ensures that employers are entitled to a deduction for superannuation contributions made on behalf of former employees in certain circumstances (ie, contributions to satisfy superannuation guarantee (SG) obligations and salary sacrifice contributions that relate to a period when the person was an employee). This section is amended to also provide that a superannuation contribution made on behalf of a former employee (made in lieu of salary or wages that relate to a period of service during which they were an employee) is tax deductible to the employer if made within two months of them ceasing employment. *[Schedule 3, items 11 and 12, paragraphs 290-85(1)(b) and (c) of the ITAA 1997]*

1.6 Currently, if a person (with an interest in the employer as described in section 290-90\* of the ITAA 1997) makes a contribution on behalf of the former employee of the employer, a deduction will not be available under section 290-85\*. This is because the person on whose behalf the contribution is made (the former employee) was never an employee of the person making the contribution. Section 290-85\* of the ITAA 1997 is amended to ensure that a person who makes a contribution in respect of another person as described under section 290-90\* may, in certain circumstances, claim a tax deduction for contributions made on behalf of these former employees. *[Schedule 3, items 13 and 14, subsections 290-85(1A) and (3) of the ITAA 1997]*

#### **Example 1.1**

John terminates employment with his employer, ABC Pty Ltd, on 28 December. ABC Pty Ltd pays John his final salary on 15 January and consequently there is an SG obligation on this final salary payment. XYZ Pty Ltd holds a 50 per cent shareholding in ABC Pty Ltd and makes a contribution to satisfy ABC Pty Ltd's SG obligation for John. The amendment to section 290-85\* under this Bill would allow a tax deduction for a contribution made by XYZ Pty Ltd to satisfy ABC Pty Ltd's SG obligation for John even though he was never an employee of XYZ Pty Ltd.

#### ***Deduction not available for contribution of the CGT exempt amount***

1.7 A deduction cannot be claimed for contributions made by those under age 55, which are attributable to a capital gain disregarded under the small business CGT retirement concession. This is consistent with the current law where the roll-over of an eligible termination payment (ETP) that consists of the CGT exempt amount is not eligible for a tax deduction. *[Schedule 2, item 9, subsection 290-150(4) of the ITAA 1997]*



### ***Transfers from foreign superannuation schemes***

1.8 In section 290-5\* of the ITAA 1997, contributions excluded from attracting a tax deduction included a benefit transferred from an overseas superannuation fund. However, this provision was inadvertently narrowed and excluded transfers from foreign superannuation schemes. This amendment ensures that an amount transferred from a foreign superannuation scheme to an Australian superannuation fund is not a contribution eligible for a tax deduction under Division 290\* of the ITAA 1997. *[Schedule 1, item 205, section 290-5 of the ITAA 1997]*

### ***Personal contributions and the less than 10 per cent rule***

1.9 Section 290-150\* of the ITAA 1997 provides that a person may claim a tax deduction for a personal contribution if certain conditions are met. To clarify the provision and better reflect the policy intent, the words 'if applicable' are inserted so that it is clear the condition in section 290-160\* of the ITAA 1997 will apply only where a person is involved in activities that result in them being treated as an employee for SG purposes. *[Schedule 1, item 207, subsection 290-150(2)]*

## **Personal contributions and variation notices**

1.10 An individual who wishes to claim a tax deduction for their superannuation contributions is required to notify the trustee or retirement savings account (RSA) provider in writing. Section 290-180\* of the ITAA 1997 provides that this notice may be varied in certain circumstances. This amendment provides that a request to vary a notice is not effective if the person is no longer a member of the fund or holder of the RSA, the provider is no longer the holder of the contribution, or a pension has begun to be paid which includes the contribution covered by the request to vary the notice. This is consistent with the circumstances required for the original notice to be valid. *[Schedule 3, item 15, subsection 290-180(3A) of the ITAA 1997]*

## **Property transfers as contributions**

1.11 A contribution mentioned in Part 3-30 of the ITAA 1997 can be, or include, a transfer of property. If the contribution is, or includes, a transfer of property, the amount of the contribution is the market value of the property, reduced by the value of any consideration given for the transfer of the property. The definition of 'market value' is contained in subsection 995-1(1) of the ITAA 1997. *[Schedule 3, item 10, section 285-5 of the ITAA 1997]*

## **Substituted accounting periods**

1.12 Transitional arrangements have been put in place for deductions for superannuation contributions made by employers and individuals with substituted accounting periods for the 2006-07 income year which end before 1 July 2007. The transitional regime applies to the period that begins after the taxpayer's 2006-07 income year and ends just before 1 July 2007. Employer contributions made from 1 July 2007 will be fully deductible. These contributions, which have been claimed as a deduction, will generally be included in the concessional contributions cap in Subdivision 292-B\* of the ITAA 1997.

1.13 The transitional arrangements allow deductions under sections 82AAC and 82AAT of the ITAA 1936 for contributions up to the aged-based limits that applied in the 2006-07 income year, with no indexation applied. *[Schedule 3, item 45, section 290-15 of the Income Tax (Transitional Provisions) Act 1997]*

## **Concessional contributions cap**

### *Defined benefits interests and notional taxed contributions*

1.14 Section 292-170\* of the ITAA 1997 sets out the requirements for a trustee to determine the notional taxed contributions for a defined benefit interest. Subsection 292-170(6)\*, as amended, deems the amount of notional taxed contributions to be equal to the concessional contributions cap if the person held the defined benefit interest on 5 September 2006 and the conditions in the regulations are met. *[Schedule 3, items 21, 24 and 25, paragraph 292-170(6)(d) and subsection 292-170(7) of the ITAA 1997]*

1.15 This treatment is extended to situations where the person held the defined benefit interest on 5 September 2006 and the entire value of the original interest is transferred to a successor fund, either directly or through a series of transfers, where the right to accrue future benefits in the successor fund is equivalent to those in the original fund and the conditions in the regulations are met. *[Schedule 3, items 22 and 23, section 292-170 of the ITAA 1997]*

### **Example 1.2**

Sally held a defined benefit interest in Fund A on 5 September 2006 which is deemed to equal the concessional contributions cap. On 1 July 2008 this interest is transferred to Fund B where her right to accrue future benefits are equivalent to Fund A.

On 1 July 2010 the interest is then transferred to Fund C, which also provides equivalent rights to accrue future benefits as Fund B and satisfies any conditions in the regulations.

Sally's defined benefit interest will continue to be deemed to equal the concessional contributions cap.

#### ***Directed termination payments***

1.16 To better reflect policy intent, the transitional measure that excludes directed termination payments from a person's concessional contributions cap to the extent they do not exceed a total of \$1 million is amended, so that only the taxable component of each directed termination payment is counted towards the \$1 million limit. *[Schedule 1, items 262 to 264, section 292-25 of the Income Tax (Transitional Provisions) Act 1997]*

1.17 A further transitional measure is included to exclude the tax-free component of directed termination payments from the concessional contributions cap. *[Schedule 1, item 261, subsection 292-25(1A) of the Income Tax (Transitional Provisions) Act 1997]*

#### ***Reserves and allocated amounts***

1.18 Trustees can maintain reserves and accept contributions that are placed into these reserves under section 115 of the *Superannuation (Industry) Supervision Act 1993*. Regulations made for the purposes of subsection 292-25(3)\* of the ITAA 1997 may specify that amounts allocated to a member of a fund are to be included in the concessional contributions cap. *[Schedule 3, item 16, subsection 292-25(3) of the ITAA 1997]*

### **Non-concessional contributions cap**

#### ***Transitional arrangements for exemptions to the cap***

1.19 Transitional arrangements are in place to enable people to claim exemptions from the non-concessional contributions cap in Subdivision 292-C\* of the ITAA 1997. These arrangements apply to contributions related to personal injury payments and CGT events where the contribution satisfies the conditions other than being made within the specified time limit. An extension for making such contributions is provided until 30 June 2007. *[Schedule 3, items 46 and 47, paragraphs 292-80(3)(ea) and 292-80(3)(fa) of the Income Tax (Transitional Provisions) Act 1997]*

### **Example 1.3**

Jane receives a settlement payment relating to a personal injury on 10 July 2006. Normally her contribution would have to be made within 90 days to be eligible for an exemption from the non-concessional contributions cap. However under the transitional provision she has until 30 June 2007 to contribute the payment into a superannuation fund.

Bob receives a settlement payment relating to a personal injury on 1 June 2007. He has 90 days to make a contribution into superannuation for which an exemption from the non-concessional contributions cap can be claimed. He is not required to make the contribution before 30 June 2007.

### ***Directed termination payments***

1.20 To better reflect policy intent, a further transitional measure is inserted to exclude the tax-free component of directed termination payments from the non-concessional contributions cap. [*Schedule 1, item 265, section 292-90 of the Income Tax (Transitional Provisions) Act 1997*]

### ***Reserves and allocated amounts***

1.21 To avoid potential circumvention of the non-concessional contribution cap through the use of reserves, regulations made for the purposes of paragraph 292-90(4)(a)\* may specify that amounts allocated to a member of a fund are to be included in the non-concessional contributions cap. [*Schedule 3, items 17 and 18, paragraphs 292-90(1)(aa) and 292-90(4)(a) of the ITAA 1997*]

### ***Contributions not allowed as deductions are included in the cap***

1.22 As an integrity measure, the definition of ‘non-concessional contributions’ has been amended to include contributions that are included in the assessable income of the superannuation provider in relation to the superannuation plan but for which a tax deduction is not allowed by the Commissioner of Taxation (Commissioner). This will mean that these contributions are not included in the concessional contributions cap (but will be included in the non-concessional contributions cap). [*Schedule 3, item 18, paragraph 292-90(4)(b) of the ITAA 1997*]

#### **Example 1.4**

Rebecca gives a notice to her fund indicating that she will claim her \$50,000 personal contribution as a tax deduction. However, the Commissioner denies the deduction as she does not satisfy the 10 per cent rule. The amount will be counted towards her non-concessional contributions cap (and not her concessional contributions cap).

#### ***Contributions made to non-complying superannuation funds are included in the cap***

1.23 A superannuation fund's complying status is determined on a yearly basis. That is, a fund is either complying or non-complying for a whole income year. Contributions made to a non-complying fund, even if the member believed the fund to be complying at the time the contribution was made, are not counted towards the contributions caps in the year they are made. However, non-complying funds can, after appropriate rectifying actions, become complying funds. From this point, investment returns on assets invested while the fund was non-complying will benefit from the concessional tax superannuation environment.

1.24 Therefore, as an integrity measure, the definition of 'non-concessional contributions' is amended to include any contributions made to a non-complying fund in previous financial years when the fund becomes complying. This applies to the extent that those contributions were made on or after 10 May 2006 and have not previously been counted under the relevant section. [*Schedule 3, item 18, paragraph 292-90(4)(c) of the ITAA 1997*]

#### **Example 1.5**

A fund is non-complying in the 2009-10 income year. It becomes complying in 2010-11. All contributions made on behalf of a member to that fund during the 2009-10 income year will be included in their non-concessional contributions cap in the 2010-11 income year.

The same fund becomes non-complying again in 2014-15, before regaining complying status in 2016-17. All contributions made to that fund during the period since the fund last lost its complying status (ie, contributions made in 2014-15 and 2015-16) will be included in the member's non-concessional contributions cap in the year the fund regains its complying status (ie, 2016-17).

***Exemptions to the cap — amounts from the disposal of qualifying small business assets***

1.25 The Tax Laws Amendment (2006 Measures No. 7) Bill 2006 which includes changes to the small business CGT provisions, was introduced on 7 December 2006. Those amendments are proposed to apply to CGT events happening in the 2006-07 income year and later income years. The changes include replacing the concepts of ‘stakeholder’s control percentage’ (within the meaning of subsection 152-125(3)) and ‘controlling individual’ with the concepts of ‘stakeholder’s participation percentage’ (within the meaning of subsection 152-125(2)) and ‘significant individual’. As a result, provisions relating to exemptions to the cap are amended to take into account these changes in concepts. *[Schedule 2, items 10 to 12, subsections 292-100(4) and (6) of the ITAA 1997]*

1.26 Amendments are also made to ensure the timing rules for contributions made under the CGT cap operate as intended. *[Schedule 3, items 19 and 20, paragraphs 292-100(2)(b) and 292-100(7)(b) of the ITAA 1997]*

**Release authorities**

1.27 A person will be prohibited from giving a release authority to a non-complying superannuation provider. That is, a person may only give a release authority to a complying superannuation provider. A person *must* give a release authority relating to excess non-concessional contributions tax to a complying superannuation provider. This corrects an anomaly in the main Bill to ensure that the amounts released are from the concessional superannuation environment, in line with the Government’s intention. *[Schedule 3, items 27 to 32 and 48 to 50, sections 292-410 and 292-415 of the ITAA 1997, sections 292-80B and 292-80C of the Income Tax (Transitional Provisions) Act 1997]*

1.28 The Commissioner, however, is still able to present a release authority to a non-complying superannuation provider in order to have the monies released from the superannuation system. This is to circumvent practices that may exist to shelter monies from being compulsorily released. *[Schedule 3, items 31 and 32, subparagraph 292-415(1)(c)(ii) and paragraph 292-415(2)(b) of the ITAA 1997]*

**Administration**

***Shortfall interest charge***

1.29 A liability for the shortfall interest charge arises where an additional amount of excess contributions tax becomes payable as a result of an amended assessment. The date excess contributions tax is due and

payable is detailed in section 292-385\* of the ITAA 1997. *[Schedule 1, items 386 to 391, Division 280, Schedule 1 to the TAA 1953]*

### ***General interest charge***

1.30 A reference to section 292-390\* of the ITAA 1997 (unpaid excess contributions tax) is included in the index of provisions that deal with the liability for the general interest charge. *[Schedule 1, item 366, subsection 8AAB(5) of the TAA 1953]*

1.31 A general interest charge accrues on unpaid excess contributions tax and/or shortfall interest charge amounts that remain unpaid after the due date. *[Schedule 1, items 208 to 211, section 292-390 of the ITAA 1997]*

### ***Assessments and objections***

1.32 The periods for objections against assessments and amended assessments has been aligned with the four year period for excess contributions tax assessments. *[Schedule 3, items 61 and 62, section 14ZW of the TAA 1953]*

1.33 The wording in the provision relating to amendments on review has been changed to align with the general income tax regime. *[Schedule 3, item 26, paragraph 292-330(b) of the ITAA 1997]*

### ***Collection and recovery***

1.34 References to section 292-385\* of the ITAA 1997 (excess contributions tax) are included in the index of tax-related liabilities in the TAA 1953. *[Schedule 1, item 384, subsection 250-10(2), Schedule 1 to the TAA 1953]*

## **Consequential amendments**

### **CGT small business retirement exemption**

1.35 Under Subdivision 152-D of the ITAA 1997, an entity may choose to disregard a capital gain made on the disposal of active assets of a small business if they qualify for the small business retirement exemption. To qualify for the exemption, if the individual is less than age 55, an ETP that consists of the exempt capital gain (known as the 'CGT exempt amount') must be rolled over to superannuation. From age 55, the individual may choose to roll-over the ETP to a superannuation fund, commence an income stream or take it in cash.

1.36 With the removal of the concept of ETPs, including the ability to roll-over an ETP to superannuation, it is necessary to provide another mechanism for the CGT exempt amount to enter the superannuation system. The amendments contained in Schedule 2 to this Bill (except items 10 and 11) remove the references to rolling over an ETP in Subdivision 152-D and apply to CGT events happening in the 2007-08 income year and later income years. They do not change the effect of the policy and merely replace the ETP mechanism with a requirement that to qualify for the retirement exemption, the CGT exempt amount must be contributed as a personal contribution if less than age 55. *[Schedule 2, item 12]*

1.37 These amendments are subject to the enactment of amendments contained in the Tax Laws Amendment (2006 Measures No. 7) Bill 2006.

### ***Individuals***

1.38 To qualify for the retirement exemption the following conditions must be met if the individual is less than age 55 before making the choice:

- the individual must contribute immediately an amount equal to the CGT exempt amount as mentioned in section 152-315 of the ITAA 1997 to a complying superannuation fund or RSA *[Schedule 2, item 3, paragraphs 152-305(1)(b) and (c) of the ITAA 1997]*; and
- the individual cannot claim a tax deduction on the personal contribution of the CGT exempt amount. This is consistent with the current law where the roll-over of an ETP that consists of the CGT exempt amount is not eligible for a tax deduction *[Schedule 2, item 9, paragraph 290-150(4)(a) of the ITAA 1997]*.

1.39 However, if the individual is aged at least 55, they may choose to contribute the CGT exempt amount as a personal contribution to superannuation. They may be eligible to claim a tax deduction on the personal contribution. This is consistent with the current law where an individual may choose to receive the ETP in cash, make a personal superannuation contribution and claim a tax deduction (if eligible). If a deduction is claimed, those contributions will be included in the concessional contributions cap.

1.40 As the concept of ETP is being removed from Subdivision 152-D, the provisions that referred to, or were dependent on, this concept are repealed. *[Schedule 2, items 4 and 6, subsections 152-305(1) (Note 2) and 152-310(4) of the ITAA 1997]*



### ***Companies and trusts***

1.41 Currently, the CGT exempt component of an ETP is received tax-free by the CGT concession stakeholder if within the reasonable benefit limits (RBLs). Therefore, for consistency, the payment of the CGT exempt amount by the company or trust is 'exempt income' in the hands of the CGT concession stakeholder. The exemption from tax is no longer subject to RBLs which are abolished in the main Bill. *[Schedule 2, items 1, 5 and 6, section 11-15, paragraph 152-310(2)(a) and subsection 152-310(5) of the ITAA 1997]*

1.42 If the CGT concession stakeholder is less than age 55 before receiving a payment of the CGT exempt amount, to qualify for the retirement exemption, the company or trust must make the payment to the CGT concession stakeholder by contributing it on their behalf to a complying superannuation fund or RSA. This contribution is not an employer contribution. It is treated as a personal contribution (ie, the amount is taken to have been received and contributed by the stakeholder, even though the funds are contributed directly from the company or trust to the fund or RSA). *[Schedule 2, item 8, subsections 152-325(7) and (8) of the ITAA 1997]*

1.43 If the CGT concession stakeholder is less than age 55 before the contribution is made the stakeholder cannot claim a tax deduction on the personal contribution of the CGT exempt amount. This is consistent with the current law where the roll-over of an ETP that consists of the CGT exempt amount is not eligible for a tax deduction. *[Schedule 2, item 9, paragraph 290-150(4)(b) of the ITAA 1997]*

1.44 If the payment is made to an employee of a company or trust, the payment must not be of a kind mentioned in section 82-135\* of the ITAA 1997 (disregarding paragraph (fa) of that section). This includes a payment that is deemed to be a dividend. Therefore, a payment made by a company or trust to a CGT concession stakeholder who is or was an employee will not qualify for the retirement exemption if it is considered a deemed dividend under section 109 of the ITAA 1936. To ensure that payments made to ongoing employees are subject to section 109, in the same circumstances as provided for under the Tax Laws Amendment (2006 Measures No. 7) Bill 2006 amendments, the payment is deemed to be made in consequence of termination of employment. *[Schedule 2, items 2, 7 and 8, paragraph 82-135(fa), subsections 152-325(3A) and (9) of the ITAA 1997]*

1.45 For consistency with the treatment under the Tax Laws Amendment (2006 Measures No. 7) Bill 2006 amendments, a payment made to a stakeholder who is not an employee is not subject to the restriction mentioned in the previous paragraph. *[Schedule 2, item 7, subsection 152-325(3A) of the ITAA 1997]*

## **Government co-contribution**

1.46 To attract a government co-contribution the relevant contribution must be made for the purpose of providing superannuation benefits for the person (even if the benefits are payable to a dependant after their death). The wording in this provision is altered for consistency with changes made to the deduction provisions for personal contributions in Division 290\* of the ITAA 1997. The updated wording is not intended to modify the operation of the existing law. [*Schedule 1, item 341, paragraph 7(1)(b) of the Superannuation (Government Co-contribution for Low Income Earners) Act 2003*]

1.47 In the main Bill, contributions excluded from attracting a co-contribution included a benefit transferred from an overseas superannuation fund. However, this provision was inadvertently narrowed and excluded transfers from foreign superannuation schemes. This amendment ensures that an amount transferred from a foreign superannuation scheme to an Australian superannuation fund will not be a contribution eligible for a co-contribution. [*Schedule 1, items 342 and 343, paragraph 7(1)(c) of the Superannuation (Government Co-contribution for Low Income Earners) Act 2003*]

1.48 The definitions of a 'constitutionally protected fund' and 'complying superannuation fund' in section 56 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* are updated to refer to the definitions now contained in the Dictionary in the ITAA 1997. [*Schedule 1, items 344 and 345, subsection 995-1(1) of the ITAA 1997*]

## **Income tax deduction rules**

### ***Deductions not allowed for payments of the tax***

1.49 Payments of excess contributions taxes by taxpayers are not allowed as a tax deduction. [*Schedule 1, item 179, section 26-75 of the ITAA 1997*]

### ***Deductions for financing costs on loans to pay superannuation contributions or life insurance premiums***

1.50 Deductions for financing costs connected with a contribution can only be claimed if a deduction can be claimed for the contribution under Subdivision 290-B\*. [*Schedule 1, item 179, section 26-80 of the ITAA 1997*]

1.51 Deductions for interest and expenses associated with money borrowed to pay life insurance premiums can only be claimed if the risk component of the premium received by the insurer is the entire amount of the premium and amounts the insurer is liable to pay under the policy

would be included in the person's assessable income if paid. [*Schedule 1, item 179, section 26-85 of the ITAA 1997*]

1.52 The wording in these provisions has been altered to improve readability. This rewording is not intended to modify the operation of the existing law.

### **Repeal of old law**

1.53 This Bill repeals Subdivisions AA and AB of Division 3 of Part III of the ITAA 1936 and sections 26-75, 26-80 and 26-85 of the ITAA 1997 which are rewritten into Division 290\* of the ITAA 1997. These provisions prescribe the rules for claiming deductions for superannuation contributions made in the 2006-07 income year or earlier years. [*Schedule 1, items 5 and 179, Subdivisions AA and AB of the ITAA 1936 and sections 26-75, 26-80 and 26-85 of the ITAA 1997*]

#### **Example 1.6: Notices for personal contributions**

If individuals want to claim deductions for personal contributions made before the 2007-08 income year, they need to lodge the notice under the former sections (subsections 82AAT(1A) and (1CB) of the ITAA 1936). This applies even if the notices are given to the trustee of the fund or RSA provider in the 2007-08 income year or later years. The conditions under the former section 82AAT of the ITAA 1936 for notices on contributions made before the 2007-08 income year continue to apply. Similarly, this also applies to variation notices.

1.54 This Bill also repeals Subdivision AACA of Division 17 of Part III of the ITAA 1936 which are rewritten into Division 290\* of the ITAA 1997. This Subdivision prescribes the rebate for superannuation contributions made on behalf of a spouse in the 2006-07 income year or earlier years. [*Schedule 1, item 7, Subdivision AACA*]

1.55 This Bill also repeals section 67AAA of the ITAA 1936 and rewrites it into Division 26 of the ITAA 1997. The wording in this provision has been altered to improve readability but is not intended to modify the operation of the existing law. In addition, the terms 'financing cost' and 'risk component' used in the rewritten provisions are defined in the dictionary in the ITAA 1997. [*Schedule 1, items 71, 253 and 256, section 67AAA of the ITAA 1936 and subsection 995-1(1) of the ITAA 1997*]

### **Updates to cross-references to old law**

1.56 Many provisions still operative in the Tax Acts, the *Social Security Act 1991* and *Veterans' Entitlements Act 1986* refer to provisions

repealed by this Bill. As these repealed provisions have been rewritten in the ITAA 1997, this Bill amends the cross-references with reference to the new provisions. [Schedule 1, items 48 to 50, 74, 76, 77, 78, 123, 142, 143, 156, 163, 164, 166, 167, 168, 173, 177, 178, 186, 325, 326, 340, 381, 383, 402 and 403, subsections 24AYA(1), (3) and (7), 73B(1) and (20A), section 90 (definition of 'net income' and 'partnership loss'), subsection 262A(4A), subsections 57-40(1) and 57-50(1) in Schedule 2D to the ITAA 1936, sections 10-5, 12-5, 13-1 and 20-5, paragraphs 26-55(1)(d), 85-10(2)(f) and 85-10(2)(f) (Note) of the ITAA 1997, paragraph 1075(1)(c) and subparagraph 1185Y(3)(d)(iii) of the Social Security Act 1991, subsection 5(2) of the Superannuation (Government Co-contribution for Low Income Earners) Act 2003, section 45-340 in Schedule 1 (method statement, step 1, paragraph (g)) and section 45-375 in Schedule 1 (method statement, step 1, paragraph (f)) of the TAA 1953 and paragraph 46C(1)(c) and subparagraph 49Y(3)(f)(iii) of the Veterans' Entitlements Act 1986]

## Application

1.57 The amendments outlined in this chapter apply to the 2007-08 and later income years, except for the amendments that relate to the contributions caps which apply from the 2007-08 financial year. This is intended to preserve the operation of repealed provisions outlined in this chapter for the 2006-07 and previous income years. [Schedule 1, item 406; Schedule 2, item 12; Schedule 3, item 66]

1.58 The amendments replacing cross-references to the deduction provisions for the sugarcane farmers' relief schemes in the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* apply in relation to the 2007-08 financial year and later years. [Schedule 1, item 406]

## Finding tables

1.59 The following finding tables will assist in comparing the new law contained in Division 290\* of the ITAA 1997 with the current law contained in Subdivisions AA and AB of Division 3 and Subdivision AACA of Division 17 of Part III of the ITAA 1936 and Division 26 of the ITAA 1997.

### Finding Table 1 — New law to current law

<i>New law</i>	<i>Current law</i>
<b>ITAA 1997</b>	<b>ITAA 1936 (unless otherwise indicated)</b>
290-5	No equivalent
290-10(1)	82AAR and 26-80(1) of the ITAA 1997
290-10(2)	82AAR and 26-75 of the ITAA 1997
290-60(1)	82AAC(1)(a)

<i>New law</i>	<i>Current law</i>
<b>ITAA 1997</b>	<b>ITAA 1936 (unless otherwise indicated)</b>
290-60(2)	No equivalent
290-60(3)	82AAC(1)
290-60(4)	82AAC(1A)
290-65(1)	82AAA(2) and 82AAC(1)(c)(iii)
290-65(2)	82AAA(4)
290-70	82AAA(1) <i>employee</i>
290-75(1)(a)	82AAC(1)(b)
290-75(1)(b)	82AAD(1)
290-75(1)(c)	82AAD(2)
290-75(2)	82AAD(3)
290-75(3)	82AAD(4)
290-75(4)	82AAD(4)
290-80(1)(a)	26-80(2)(b) and (4)(b) of the ITAA 1997
290-80(1)(b)	26-80(4)(c) of the ITAA 1997
290-80(2)	26-80(4) of the ITAA 1997
290-85(1)(a)	82AAC(1)(c)(ii)
290-85(1)(b)	No equivalent
290-85(2)	No equivalent
290-85(3)	No equivalent
290-90	82AAA(1) <i>eligible employee</i>
290-95	26-85 of the ITAA 1997
290-100	82AAQ and 82AAQB
290-150(1)	82AAT(1)(b)
290-150(2)	No equivalent
290-150(3)	82AAT(1)
290-155	82AAT(1)(c)
290-160(1)	82AAS(1) <i>eligible employment</i>
290-160(2)	82AAS(2) and (3)
290-165(1)	26-80(3)(aa) of the ITAA 1997
290-165(2)	26-80(3)(b) of the ITAA 1997
290-170(1)(a)	82AAT(1)(d), 82AAT(1CA)(c), and 82AAT(1D)
290-170(1)(b)	No equivalent
290-170(1)(c)	82AAT(1)(d) and 82AAT(1CA)(c)

<i>New law</i>	<i>Current law</i>
<b>ITAA 1997</b>	<b>ITAA 1936 (unless otherwise indicated)</b>
290-170(2)(a)	82AAT(1)(d) and 82AAT(1CA)(c)
290-170(2)(b)	82AAT(1B)(a) and 82AAT(1CC)(a)
290-170(2)(c)(i)	82AAT(1B)(b) and 82AAT(1CC)(b)
290-170(2)(c)(ii)	No equivalent
290-170(2)(c)(iii)	No equivalent
290-170(2)(d)	82AAT(1B)(d) and 82AAT(1CC)(d)
290-170(3)	82AAT(1A) and 82AAT(1CB)
290-170(4)	82AAT(1AA)(b) and 82AAT(1CBA)(b)
290-175	82AAT(1) and 82AAT(1CA)
290-180(1)	82AAT(1B)(c) and 82AAT(1CC)(c)
290-180(2)	82AAT(1C) and 82AAT(1CD)
290-180(3)	82AAT(1C) and 82AAT(1CD)
290-180(4)	No equivalent
290-230	159T(1) and 159T(1A)
290-235(1)	159T(2)
290-235(2)	159TA
290-240	159TB
26-80(1)	67AAA(1)
26-80(2)	67AAA(3) <i>financing cost</i>
26-85(1)	67AAA(2)
26-85(2)	67AAA(3) <i>risk component</i>

**Finding Table 2 — Current law to new law**

<i>Current law</i>	<i>New law</i>
<b>ITAA 1936</b>	<b>ITAA 1997</b>
82AAA(1) definition of 'dependant'	995-1(1) <i>SIS dependant</i>
82AAA(1) definition of 'eligible employee'	290-90
82AAA(1) definition of 'employee'	290-70
82AAA(2)	290-65(1)
82AAA(4)	290-65(2)
82AAC(1)(a)	290-60(1)
82AAC(1)(b)	290-75(1)(a)

<i>Current law</i>	<i>New law</i>
<b>ITAA 1936</b>	<b>ITAA 1997</b>
82AAC(1)(c)(i)	290-60 and 290-90
82AAC(1)(c)(ii)	290-85(1)(a)
82AAC(1)(c)(iii)	290-65(1)
82AAC(1A)	290-60(4)
82AAC(2)	Omitted
82AAC(2A)	Omitted
82AAC(2B)	Omitted
82AAC(2C)	Omitted
82AAC(3) definition of 'associate'	995-1(1)
82AAC(3) definition of 'member spouse'	Omitted
82AAC(3) definition of 'non-member spouse'	995-1(1)
82AAC(3) definition of 'regulated superannuation fund'	290-60(4)
82AAC(3) definition of 'RSA'	995-1(1)
82AAC(3) definition of 'superannuation interest'	995-1(1)
82AAD	290-75(1)(b) and (c), and (2) to (4)
82AADA	290-60(1)
82AAF	Omitted
82AAQ	290-100
82AAQA	Omitted
82AAQB	290-100
82AAR	290-10
82AAS(1) definition of 'complying superannuation fund'	995-1(1)
82AAS(1) definition of 'contributions-splitting ETP'	Omitted
82AAS(1) definition of 'dependant'	995-1(1) <i>SIS dependant</i>
82AAS(1) definition of 'eligible employment'	290-160(1)
82AAS(1) definition of 'eligible person'	Omitted
82AAS(2)	290-160(2)
82AAS(3)	290-160(2)
82AAS(4)	Omitted

<i>Current law</i>	<i>New law</i>
<b>ITAA 1936</b>	<b>ITAA 1997</b>
82AAS(5)	Omitted
82AAS(6)	Omitted
82AAS(7)	Omitted
82AAS(8)	Omitted
82AAS(9)	Omitted
82AAS(10)	Omitted
82AAS(11)	Omitted
82AAS(12)	Omitted
82AAT(1)(a)	290-160(1)
82AAT(1)(b)	290-150(1)
82AAT(1)(c)	290-155
82AAT(1)(d)	290-170(1)(a) and (c)
82AAT(1A)	290-170(3)
82AAT(1AA)	290-170(4)
82AAT(1B)(a)	290-170(2)(b)
82AAT(1B)(b)	290-170(2)(c)(i)
82AAT(1B)(c)	290-180(1)
82AAT(1B)(d)	290-170(2)(d)
82AAT(1BA)	290-170(2)(d)(i)
82AAT(1C)	290-180(2) to (4)
82AAT(1CA)(a)	290-160(1)
82AAT(1CA)(b)	290-150(1)
82AAT(1CA)(c)	290-170(1)(a) and (c)
82AAT(1CB)	290-170(3)
82AAT(1CBA)	290-170(4)
82AAT(1CC)(a)	290-170(2)(b)
82AAT(1CC)(b)	290-170(2)(c)(i)
82AAT(1CC)(c)	290-180(1)
82AAT(1CC)(d)	290-170(2)(d)
82AAT(1CCA)	290-170(2)(d)(i)
82AAT(1CD)	290-180(2) to (4)
82AAT(1D)	290-170(1)(a) and 290-180(2)
82AAT(1E)	Omitted
82AAT(1F)	Omitted



<i>Current law</i>	<i>New law</i>
<b>ITAA 1936</b>	<b>ITAA 1997</b>
82AAT(2)	Omitted
82AAT(2A)	Omitted
82AAT(2B)	Omitted
82AAT(2C)	Omitted
82AAT(3)	Omitted
82AAT(4)	995-1(1)
159T(1)	290-230(1) to (3)
159T(1A)	290-230(4)
159T(2)	290-235(1)
159T(3) definition of 'member spouse'	Omitted
159T(3) definition of 'non-member spouse'	995-1(1)
159T(3) definition of 'regulated superannuation fund'	290-230(4)
159T(3) definition of 'RSA'	995-1(1)
159T(3) definition of 'superannuation interest'	995-1(1)
159TA	290-235(2)
159TB	290-240
159TC definition of 'complying superannuation fund'	995-1(1)
159TC definition of 'dependant'	995-1(1) <i>SIS dependant</i>
159TC definition of 'eligible spouse contributions'	290-230(1) and 290-230(2)(a), (d) and (e)
159TC definition of 'spouse'	995-1(1) and 290-230(3)
26-75	290-10(2)
26-80(1)	290-10(1)
26-80(2)(a)	290-60
26-80(2)(b)	290-80(1)(a)
26-80(3)(a)	290-150
26-80(3)(aa)	290-165(1)
26-80(3)(b)	290-165(2)
26-80(3)(c)	Omitted
26-80(4)	290-80(1)(b) and (2)
26-80(5)	Omitted

<i>Current law</i>	<i>New law</i>
<b>ITAA 1936</b>	<b>ITAA 1997</b>
26-80(6)	Omitted
26-85	290-95
67AAA(1)	26-80(1)
67AAA(2)	26-85(1)
67AAA(3) definition of 'dependant'	Omitted
67AAA(3) definition of 'financing cost'	26-80(2) and 995-1(1)
67AAA(3) definition of 'risk component'	26-85(2) and 995-1(1)

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## **Chapter 2**

# ***Taxation of benefit payments and employment termination payments***

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### **Outline of chapter**

2.1 This chapter makes some minor additions to the law to clarify or complement the operation of the superannuation benefit taxation provisions in the Tax Laws Amendment (Simplified Superannuation) Bill 2006 (main Bill). For example, tax withholding and payment summary requirements are clarified, now that superannuation benefits paid from a taxed source to a person aged 60 or over will be tax-free.

2.2 It also covers the abolition of the old superannuation benefit taxation law, including reasonable benefit limits (RBLs) and the concept of eligible termination payments (ETPs).

2.3 Updates to references in other Acts to repealed superannuation benefit taxation law are also covered, to clarify policy intent going forward.

### **Additions to the law created by the main Bill**

#### **Withholding arrangements**

2.4 Superannuation funds are no longer required to withhold tax from superannuation benefits paid from a taxed source to a person aged 60 or over, or provide payment summaries to these individuals. The withholding and payment summary requirements for other wholly not assessable not exempt (ie, tax-free) payments are also removed to minimise compliance costs. [*Schedule 1, item 373; Schedule 3, items 63 to 65*]

2.5 In addition, the child support legislation is amended to ensure that these amendments do not result in any change to the sources of funds from which child support can be collected. [*Schedule 3, items 4 to 7*]

## **Cashing of death benefits**

2.6 Under *Simplified Superannuation*, from 1 July 2007, superannuation pensions are no longer able to revert to a non-dependant on death; rather, death benefit payments to non-dependants must be made as lump sums. The governing rules of a superannuation fund must not allow the benefits of a deceased member to be cashed otherwise than in accordance with the regulations. The regulations override and invalidate the governing rules of a fund to the extent of any inconsistency with the regulations. *[Schedule 1, items 279 and 361]*

## **Superannuation guarantee opt out provisions**

2.7 Currently, employees with accumulated superannuation entitlements in excess of the pension RBL may elect not to receive superannuation contributions from their employers. As RBLs are abolished, from 1 July 2007, these elections will no longer be able to be made. As these elections were irrevocable, existing elections will remain in force. *[Schedule 1, items 349 and 350]*

## **Superannuation and bankruptcy**

2.8 Currently, under the *Bankruptcy Act 1966*, a bankrupt's interest in a superannuation fund up to the bankrupt's pension RBL is protected from being divisible amongst creditors. A bankrupt's superannuation interest in excess of the pension RBL automatically vests in the bankruptcy trustee.

2.9 The amendments remove references to RBLs from the *Bankruptcy Act 1966* to ensure consistency with the new *Simplified Superannuation* rules which abolish RBLs with effect from 1 July 2007. This means that, from 1 July 2007, a bankrupt's entire interest in a superannuation fund is protected from being divisible amongst creditors. *[Schedule 3, item 1]*

2.10 Related provisions in the *Bankruptcy Act 1966* that set out methods of apportionment and valuation of the interest of the bankrupt in the fund, for the purposes of the vesting provisions, are also removed. *[Schedule 3, item 2]*

2.11 The above protection provided to superannuation interests is subject to new provisions contained in the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006, introduced into Parliament on 6 December 2006. The Bankruptcy Bill amends the *Bankruptcy Act 1966* to provide that bankruptcy trustees can recover superannuation contributions made on or after 28 July 2006 with the

intention to defeat creditors. For further details, see the explanatory memorandum to the Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006.

2.12 The amendments in this Bill take into account changes to the wording of provisions that will be made by the Bankruptcy Bill and will apply from 1 July 2007. [*Schedule 3, items 1 to 3*]

2.13 In addition, amendments in this Bill clarify that amounts paid out of a superannuation fund pursuant to provisions in the Bankruptcy Bill are not subject to further taxation. [*Schedule 3, item 37, paragraph 307-10(ab) of the Income Tax Assessment Act 1997*]

### **Tax rates**

2.14 Under *Simplified Superannuation*, amounts received as superannuation benefits in excess of the untaxed plan cap and amounts received as employment termination payments in excess of the employment termination payment cap, are taxed at the top marginal tax rate (plus the Medicare levy) to ensure the tax concessions provided to superannuation are targeted appropriately.

2.15 Amounts to be taxed at the top marginal tax rate (plus the Medicare levy) are classed as special types of taxable income — the superannuation remainder of taxable income and the employment termination remainder of taxable income. [*Schedule 1, items 3, 6, 7, 9, 14, 16, 17, 20, 22 to 24, 33 and 34 of the Income Tax Rates Amendment (Superannuation) Bill 2007*]

### **Property transfers**

2.16 A superannuation lump sum can be (or include) a transfer of property. If the superannuation lump sum is a transfer of property, the value of the benefit is the market value of the property. The market value is reduced by the value of any consideration given for the transfer of the property. The definition of 'market value' is contained in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997). [*Schedule 3, item 10*]

2.17 The provisions ensuring that an employment termination payment can be a transfer of property are clarified to ensure that all, or part, of the payment can be a transfer of property. [*Schedule 3, items 8 and 9*]

## **Other amendments**

2.18 A number of other amendments have been made to provisions introduced by the main Bill to clarify the provisions and to better reflect the policy intent. These amendments:

- restrict the ability to treat contributions as untaxed benefits, if they are paid out within a year, to public sector superannuation schemes in existence before 5 September 2006 [*Schedule 3, items 38 to 41*];
- ensure the \$1 million limit on the amount of a transitional employment termination payment that can be rolled over into superannuation is reduced by the taxable component of every transitional employment termination payment made, rather than the entire amount of the payment [*Schedule 1, item 269, section 306-10 of the Income Tax (Transitional Provisions) Act 1997*];
- clarify references to an inability to perform normal employment duties for the purposes of temporary disability payments to ensure these payments can be made to the self-employed [*Schedule 3, item 36*];
- ensure that roll-overs within the same superannuation plan are not counted against the untaxed plan cap [*Schedule 1, item 225; Schedule 3, item 44*];
- apply the new pension arrangements to recipients of an income stream from a taxed source who are already over the age of 60 as at 1 July 2007 [*Schedule 1, item 270*];
- clarify the method for calculating the tax-free component of an income stream that is commuted [*Schedule 1, item 271*];
- recognise that income streams which commenced before 1 July 1994 already receive pre-July 1983 amounts tax-free [*Schedule 1, item 272*];
- clarify the method statement determining what portion of the taxable component of a lump sum payment from a public sector superannuation scheme is an element untaxed in the fund [*Schedule 3, items 42 and 43*]; and

- clarify the note to subsection 305-65 of the ITAA 1997 as the concept of a vested amount is not relevant to lump sums received within six months after Australian residency [*Schedule 1, item 224*].

2.19 The remaining provisions introduced by the main Bill ensure that the correct tax treatment applies to a range of payments. Specifically:

- benefits (including non-cash benefits) received from superannuation funds in breach of statutory requirements are taxed at marginal rates [*Schedule 3, item 35*];
- amounts released pursuant to transitional release authorities are tax-free up to the amount specified in the release authority and assessable income if above that amount [*Schedule 1, items 219 and 269, section 304-15 of the Income Tax (Transitional Provisions) Act 1997*];
- foreign and Australian superannuation arrangements which have certain grandfathered arrangements applied under current law maintain their existing taxation treatment [*Schedule 1, items 41, 51 to 56, 220, 221, 267 and 268; Schedule 3, item 37, paragraph 307-10(a) of the ITAA 1997*];
- amounts transferred from foreign superannuation schemes continue to be taxed in the same way as if they were paid from a foreign superannuation fund [*Schedule 1, items 222 and 223*];
- employee share scheme payments are excluded from being employment termination payments [*Schedule 1, items 184 and 185*]; and
- the deemed dividend exclusion is expanded so that amounts that are a deemed dividend under any provision of the *Income Tax Assessment Act 1936* (ITAA 1936) or the ITAA 1997 are excluded from being an employment termination payment [*Schedule 1, item 183*].

## **Consequential amendments**

### **Repeals**

2.20 The existing provisions imposing tax on superannuation benefits, including RBLs and the previous rebate for superannuation

pensions, are repealed. This removes significant complexity from the taxation arrangements that apply to superannuation benefits. [*Schedule 1, items 2 to 4, 6, 7, 181 and 405*]

2.21 The existing provisions imposing tax on employment termination payments are also repealed. The tax treatment of these payments is currently linked to the tax treatment of superannuation lump sums. [*Schedule 1, items 2 to 4, 6 and 7*]

2.22 In both cases, existing provisions which are retained in the new regime are rewritten in a simplified and modernised form to improve the readability of the law.

## **Changes to cross-references**

### *Pensions and annuities*

2.23 Currently, section 27H of the ITAA 1936 includes amounts of annuities or superannuation pensions in assessable income. From 1 July 2007 revised taxation arrangements apply to Australian-sourced superannuation income streams, but section 27H continues to apply to other income streams (including foreign sourced benefits and non-superannuation annuities). There is no intention to modify the operation of this provision for foreign-sourced benefits or non-superannuation annuities. [*Schedule 1, items 59 to 64, 226 and 227*]

2.24 Definitions for ‘residual capital value’, ‘undeducted purchase price’ and ‘purchase price’ are inserted into section 27H. These definitions are based on the existing definitions in subsection 27A(1) of the ITAA 1936 which are repealed. [*Schedule 1, items 65 to 68*]

2.25 References to the taxation treatment, or definition, of pensions and annuities are updated to reflect the new provisions in the ITAA 1997 and the updated provisions in section 27H of the ITAA 1936. [*Schedule 1, items 10 to 12, 20, 90, 92 to 97, 239, 241, 247, 248 and 367 to 369*]

### *Eligible termination payments (ETPs)*

2.26 The previous ETP concept covered lump sum payments both from superannuation entities and those arising from employment arrangements. The previous concept is now covered by two new concepts — a ‘superannuation lump sum’, which covers such payments from superannuation entities, and an ‘employment termination payment’, which refers to those instances where a payment is made, otherwise than from a superannuation fund, in consequence of the termination of employment.



2.27 In some instances references to ETP are updated to refer to both new concepts. [*Schedule 1, items 20, 37, 81 to 83, 91, 92, 96, 144, 176, 180, 182, 246, 249, 367 to 369 and 377*]

2.28 Where the application of the law is clearly intended to only apply to certain types of ‘eligible termination payment’, only the relevant term is substituted. [*Schedule 1, items 17 and 97*]

2.29 As well as updating references to ETPs, the provisions ensuring capital gains tax (CGT) does not apply to superannuation lump sums and employment termination payments, are consolidated into the CGT provisions of the ITAA 1997. [*Schedule 1, items 194 and 197*]

2.30 In addition, references to ‘rolled over amounts’, ‘retained amounts’ and other similar terms are updated to reflect the new arrangements under which employment termination payments can not be rolled over into superannuation (with a limited exception for certain entitlements as at 9 May 2006). The existing meaning of ‘rolled over amounts’ is maintained for provisions which refer to events occurring prior to 1 July 2007. [*Schedule 1, items 237, 238, 240, 257, 269, 351 and 375; Schedule 3, item 51*]

#### ***Terminology describing other payments***

2.31 Some defined terms were omitted in the rewrite of the superannuation provisions into the ITAA 1997, with the substance of the defined term instead spelled out in the operative rule. The affected terms are ‘eligible resident non-complying superannuation fund’, ‘eligible non-resident non-complying superannuation fund’, ‘exempt non-resident foreign termination payment’ and ‘exempt resident foreign termination payment’. [*Schedule 1, items 20, 43 to 46, 135 and 136*]

2.32 From 1 July 2007, the ‘upper limit’ calculated under section 159SG of the ITAA 1936 ceases to have effect. This threshold set the amount of a payment taxed at zero per cent where the recipient of an ETP was aged 55 or over. Where provisions not related to the taxation of lump sums:

- relied on this reference to provide them with a value, the reference has been updated to the relevant new concept, the ‘low rate cap amount’ [*Schedule 1, items 13 to 15*]; or
- modified the treatment of income which is taxed at zero per cent, the reference has been updated to reflect income to which this tax arrangement applies [*Schedule 1, items 9 and 122*].

2.33 Sections 26AC and 26AD of the ITAA 1936 dealt with the tax treatment of (and relevant definitions associated with) payments made in lieu of unused annual leave and unused long service on the termination of employment. References to these sections, or to the definitions of these types of leave, are updated to capture the relevant new provisions in the ITAA 1997. [Schedule 1, items 20, 73, 75, 80, 176, 180, 182, 246, 249, 346, 367 to 369 and 377]

2.34 Whilst the superannuation contributions surcharge has been abolished, members with surcharge debt accounts and members of untaxed superannuation schemes are liable for superannuation contributions surcharge when their superannuation benefit is paid. As a result, references to the new term 'superannuation benefit' are inserted into the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*. [Schedule 1, items 328 to 338]

#### ***Social security and Veterans' Affairs consequential amendments***

2.35 A number of definitions in the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* are updated. [Schedule 1, items 289, 290, 395, 396 and 401]

2.36 The definition of 'residual capital value' is replaced. The ***residual capital value*** of an income stream is defined as the capital amount payable on the termination of the income stream. An account based income stream will not have a residual capital value. [Schedule 1, items 291, 293, 397 and 399]

2.37 The definition of 'superannuation fund' is updated to ensure that, for income support purposes, the concessional treatment of assets held in superannuation funds is restricted to Australian superannuation funds. In particular, the new definition ensures that a superannuation pension from a 'foreign superannuation fund' (formerly a 'non-resident superannuation fund') is assessable income under these Acts; but that no deductions are allowed. A corresponding amendment is also made to the definition of superannuation fund in the *Veterans' Entitlements Act 1986*. [Schedule 1, items 292 and 398]

2.38 Both the general definition of 'liquid assets', and a similar definition for the purposes of the Financial hardship (Carer Payment), are updated to ensure that amounts which would otherwise be liquid assets are not liquid assets when they are either a roll-over superannuation benefit (within the meaning of the ITAA 1997), a superannuation lump sum that is a contributions-splitting superannuation payment or a directed

termination payment (within the meaning of the *Income Tax (Transitional Provisions) Act 1997*). [*Schedule 1, items 294 to 296*]

2.39 In addition to updating definitions, the income maintenance period provisions contained in the various rate calculators are updated.

2.40 For certain social security payments, where a person receives a lump sum termination payment the amount is apportioned over the period it represents and is maintained as ordinary income for that period. Currently, where a person rolls over (as provided in the ITAA 1936) a termination payment into a certain type of fund or annuity, the amount is not maintained as ordinary income. These arrangements are maintained for directed termination payments (within the meaning of the *Income Tax (Transitional Provisions) Act 1997*).

2.41 Amendments are made to payments which are currently subject to the income maintenance period provisions: disability support pension (except for people who are permanently blind), newstart allowance, youth allowance, austudy, widow allowance, sickness allowance, partner allowance, mature age allowance and parenting payment. The amendments commence from 1 July 2007. It is not intended that any amount rolled over under the old rules prior to 1 July 2007 should be subject to the new rules and therefore counted as ordinary income upon commencement of the amendments. [*Schedule 1, items 297 to 324*]

#### ***Other consequential amendments***

2.42 Other consequential amendments:

- update references to the superannuation and employment termination taxation provisions in the ITAA 1997 [*Schedule 1, items 42, 47, 103, 105, 106, 140, 149, 244, 245 and 376*];
- insert or update definitions of commonly used terms in section 6 of the ITAA 1936 and section 995-1 of the ITAA 1997 [*Schedule 1, items 26, 35, 36, 250, 251, 259 and 260*];
- update references to departing Australia superannuation payments or their taxation treatment [*Schedule 1, items 38, 112, 113, 137 to 139, 370 to 372 and 374; Schedule 1, items 1 and 2 of the Income Tax Amendment Bill 2007*];
- update or omit a range of other definitions throughout a number of Acts [*Schedule 1, items 145, 146 and 284 to 286*];
- update guide material in the ITAA 1997 [*Schedule 1, items 151, 152, 155 to 158, 160, 161, 169 to 173 and 175*]; and

- technical corrections are made to improve the wording of some provisions in the main Bill and to remove incorrect references to employment termination payments in the definition of an ‘early retirement scheme payment’  
*[Schedule 4, items 1, 2, 4 to 6 and 9 to 11].*

### **Application provisions**

2.43 The amendments outlined in this chapter apply from on or after 1 July 2007, except for the social security and Veterans’ Affairs amendments in paragraphs 2.35 to 2.38 (first four only) which apply from the 2007-08 and later income years. *[Schedule 1, item 406; Schedule 3, item 66; Schedule 1, item 35 of the Income Tax Rates Amendment (Superannuation) Bill 2007]*

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## **Chapter 3**

# ***Taxation of superannuation entities***

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### **Outline of chapter**

3.1 This chapter makes minor additions to the law to clarify or complement the operation of the superannuation entity taxation provisions in the Tax Laws Amendment (Simplified Superannuation) Bill 2006 (main Bill). For example, it makes changes to ensure the current arrangements for foreign superannuation schemes are maintained and clarifies when a superannuation fund's central management and control will be considered ordinarily in Australia.

3.2 It also outlines minor additions to the law to support the increased quotation of tax file numbers (TFNs) to superannuation funds and retirement savings accounts (RSA) and the no-TFN contributions tax.

3.3 The old superannuation entity provisions in Part IX of the *Income Tax Assessment Act 1936* (ITAA 1936) are repealed. Updates to references in other Acts to these old provisions are also outlined to clarify the policy intent going forward.

### **Additions to the law created by the main Bill**

#### **Entity taxation**

##### ***Ensuring consistent treatment of employees and the self-employed***

3.4 To clarify the provisions, and better reflect the policy intent, amendments are made to sections 295-460\*<sup>2</sup> and 295-470\* of the *Income Tax Assessment Act 1997* (ITAA 1997) to ensure these provisions cover the self-employed. [*Schedule 1, items 217 and 218*]

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<sup>2</sup> Asterisk \* refers to sections of the ITAA 1997 that are to be created by the main Bill.

***Contributions made by certain trustees***

3.5 The rewritten provisions in Division 295\* of the ITAA 1997 do not exclude certain contributions from superannuation entities' assessable income, where they are made for the benefit of someone else by the trustee of a complying superannuation fund, complying approved deposit fund, pooled superannuation trust or exempt life assurance fund. This exclusion was previously in Part IX of the ITAA 1936 (sub-subparagraphs 274(1)(a)(i)(A) and (B)), so a provision to this effect is inserted into Subdivision 295-C\* of the ITAA 1997. [*Schedule 1, item 215*]

***Amounts transferred from foreign superannuation schemes***

3.6 Rewritten provisions in section 295-200\* of the ITAA 1997, setting out the taxation arrangements applying to amounts transferred to certain superannuation funds from foreign superannuation funds have been inadvertently narrowed by excluding foreign superannuation schemes. Amendments are made to ensure that amounts transferred from foreign superannuation schemes continue to be captured in the assessable income of certain entities in the same way as if they were paid from a foreign superannuation fund. [*Schedule 1, item 216*]

***Australian superannuation fund: the 'ordinarily' requirement***

3.7 Subsection 295-95(2)\* of the ITAA 1997 defines 'Australian superannuation fund', which replaces the definition of 'resident superannuation fund' in section 6E of the ITAA 1936. Unlike the definition of 'resident superannuation fund', the new 'Australian superannuation fund' does not have a specific 'two-year temporary absence rule', but instead has a more general requirement that the central management and control of the fund 'ordinarily' be in Australia.

3.8 To provide certainty to trustees of superannuation funds, especially trustees of self-managed superannuation funds (for whom the old 'two-year temporary absence rule' was mainly directed), a provision is inserted into the definition of 'Australian superannuation fund', which explains that a superannuation fund is considered ordinarily in Australia even if the central management and control is temporarily outside Australia, where it is for a period of less than two years. [*Schedule 1, item 214*]

**Other amendments**

3.9 Other amendments are made to provisions introduced by the main Bill to clarify provisions and better reflect the policy intent. These amendments restrict the ability of trustees to choose to treat certain contributions as untaxed benefits (and exclude them from assessable income of the fund) if they are paid out of the fund within a year, to public sector superannuation schemes in existence before 5 September 2006.  
*[Schedule 3, items 33, 34 and 38 to 41]*

**Transitional provisions: notices given and acknowledged under former sections**

3.10 The assessable income of complying superannuation funds and RSA providers includes contributions covered by valid and acknowledged notices under section 290-170\* of the ITAA 1997. Section 290-170\* permits a person who is eligible for a deduction under section 290-150\* of the ITAA 1997 (for contributions they have made to a complying superannuation fund or RSA provider) to claim a deduction where they have given the trustee a notice specifying the amount of the contributions they intend to claim as a deduction, and where they have received an acknowledgement of the notice from the trustee.

3.11 The rewritten provision of Part IX of the ITAA 1936 (subsection 295-190(1)\* of the ITAA 1997, item 1 in the table) that operates for the 2007-08 income year and future income years does not include in assessable income of complying superannuation funds and RSA providers, contributions covered by valid and acknowledged notices under the former sections (subsections 82AAT(1A) and (1CB) of the ITAA 1936).

3.12 If individuals want to claim deductions for personal contributions made before the 2007-08 income year, they need to lodge the notice under the former sections (subsections 82AAT(1A) and (1CB) of the ITAA 1936) as these are the subsections that still apply for contributions made before the 2007-08 income years (even if the notices are given to the trustee of the fund or RSA provider after 1 July 2007). A transitional provision deems valid notices given under these former sections to have the same effect, after 1 July 2007, as if they were notices given under the new rewritten section. This will ensure these contributions are included in assessable income of the fund or RSA.  
*[Schedule 1, item 266, subsection 295-190(1)]*

3.13 The conditions under the former section 82AAT of the ITAA 1936 for notices on contributions made before the 2007-08 income year continue to apply.

3.14 Amounts covered by a section 290-170\* notice in the ITAA 1997 (or subsection 82AAT(1A) or (1CB) notice in the ITAA 1936), can be reduced by giving the trustee a variation notice. This allows a member whose claim for a deduction has been wholly or partially disallowed to notify the fund or RSA provider, so they can adjust their assessable income accordingly. A transitional provision is inserted, which deems variation notices made under the former sections to have effect, after 1 July 2007, as if they were notices under section 290-180\* of the ITAA 1997. This ensures the correct amount is included in the assessable income of the fund or RSA. [Schedule 1, item 266, subsection 295-190(2)]

***Transitional provisions: elections made under former sections***

3.15 A transitional provision is needed to cover situations where a trustee makes an election in an income year prior to the 2007-08 income year under a Part IX provision in the ITAA 1936, which is taken to be an election for future income years. Since all the provisions of Part IX of the ITAA 1936 are repealed and rewritten, an election made under such a provision (eg, subsection 279(4)), where such an election is supposed to have continuing application, is deemed to continue to have effect as if made under Division 295\* of the ITAA 1997. [Schedule 1, item 266, Subdivision 295-G]

***Transitional provisions: rewritten provisions with limited continued application***

3.16 Provisions in Part IX of the ITAA 1997 that were not rewritten into the ITAA 1997 due to their limited continued application are rewritten into the *Income Tax (Transitional Provisions) Act 1997*. [Schedule 1, item 266, Subdivisions 295-B and 295-F]

3.17 The wording in these provisions is changed to improve readability. This rewording is not intended to modify the operation of the existing law. The Commissioner of Taxation's (Commissioner) discretion is replaced with an objective test. This change is in line with the *Review of Self Assessment* which recommended that all discretions which go to the determination of a taxpayer's liability be reviewed, and where practicable replaced with objective tests. This change is not intended to change the tax outcome. [Schedule 1, item 266, Subdivision 295-F, subsection 295-390(6)]



## TFN quotation for superannuation purposes

### *TFN declarations*

3.18 Section 202DHA\* of the ITAA 1997 provides that when an individual makes a TFN declaration to their payer (their employer) they are also authorising their employer to provide their TFN to the superannuation provider to which their employer is making contributions. This section is amended to ensure it is not retrospective in its application.

3.19 When an individual makes a TFN declaration to their payer (their employer) on or after 1 July 2007 they are also authorising their employer to provide their TFN to the superannuation provider, or RSA provider to which their employer is making contributions. [*Schedule 1, items 117 to 120*]

### *Quotation of TFNs in relation to RSAs*

3.20 The main Bill amends section 6 of the *Superannuation Industry (Supervision) Act 1993* to allow the Commissioner to regulate the quotation of an individual's TFN by their payer (their employer) and the incorrect quotation of TFNs. Section 3 is similarly amended to allow the Commissioner to regulate a payer's legal responsibilities to quote TFNs to RSA providers.

3.21 The Commissioner has the general administration of Division 2 in Part 11 of the *Retirement Savings Accounts Act 1997*, which relates to the quotation of a holder's TFN and Division 4A of Part 11 of that Act, which relates to the incorrect quotation of TFNs. [*Schedule 1, item 278*]

3.22 The Australian Prudential Regulation Authority (APRA) has the general administration of Part 11 of the *Retirement Savings Accounts Act 1997*, except Divisions 2 and 4A. [*Schedule 1, item 277*]

3.23 An employee can quote their TFN to their payer in connection with the operation or the possible future operation of the *Retirement Savings Accounts Act 1997* and other 'Superannuation Acts' on or after 1 July 2007 in connection with the operation of Division 3 of Part VA of the ITAA 1936. If the conditions in section 133 of the *Retirement Savings Accounts Act 1997* are satisfied the payer must then inform the trustee of the entity to which they make contributions, of the employee's TFN. [*Schedule 1, items 280 and 281*]

3.24 An individual is taken to have quoted their TFN to another person if the individual informs the other person of the TFN in a manner approved by APRA, in the specified approved form, or the individual is taken to have quoted their TFN in relation to the *Retirement Savings*

*Accounts Act 1997* and the ‘Superannuation Acts’ under any of the provisions in Division 4 of the *Retirement Savings Accounts Act 1997*.  
[Schedule 1, item 282]

***Incorrect quotation of a TFN***

3.25 The main Bill inserts Division 3A into the *Superannuation Industry (Supervision) Act 1993* which relates to the incorrect quotation of a TFN. Equivalent provisions are inserted into the *Retirement Savings Accounts Act 1997* concerning the incorrect quotation of a TFN to a RSA provider. [Schedule 1, item 283]

***Interest on the no-TFN income tax offset of RSA providers***

3.26 To ensure that RSA providers are treated consistently with other superannuation providers, interest payable under the *Taxation (Interest on Overpayments and Early Payments) Act 1983* includes that interest is payable where an employer has failed to comply with the requirements set out in section 133 of the *Retirement Savings Accounts Act 1997*.  
[Schedule 1, item 394]

***RSA providers that are life insurance companies***

3.27 Life insurance companies that are RSA providers are taxed under Division 320 of the ITAA 1997 in a broadly comparable manner to other entities that derive similar kinds of income.

3.28 To ensure that RSA providers that are life insurance companies are treated consistently with other RSA providers they are:

- taxed under Division 320 of the ITAA 1997 except to the extent that section 320-155 provides they are taxed under Subdivision 295-I\* in relation to no-TFN contributions income and Subdivision 295-J\* in relation to the no-TFN income tax offset of that Act [Schedule 1, items 212 and 213];
- liable to pay tax on no-TFN contributions income [Schedule 1, items 228 and 229];
- subject to Subdivisions 295-I\* and 295-J\* of the ITAA 1997 [Schedule 1, item 233]; and
- the rate of tax on their no-TFN contributions income is calculated at the top marginal tax rate (column 2 in the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986*)

plus the Medicare levy. The rate of tax generally payable on contributions for a life insurance company that is an RSA provider (set out in paragraph 23(4A)(ba) of that Act) is then subtracted from this rate [*Schedule 1, items 31 and 32 of the Income Tax Rates Amendment (Superannuation) Bill 2007*].

## Consequential changes

3.29 The rewrite of Part IX of the ITAA 1936 into Division 295\* in the ITAA 1997 as part of *Simplified Superannuation* means that Part IX is no longer needed and is repealed. [*Schedule 1, item 8*]

3.30 The rewrite and repeal of Part IX means references to the sections in that Part, within the ITAA 1936, the ITAA 1997 and other Acts (including, the *Social Security Act 1991* and the *Veterans' Entitlement Act 1986*) are updated to refer to the new corresponding provisions in Division 295\* of the ITAA 1997. [*Schedule 1, items 18, 21, 39, 40, 57, 58, 72, 79, 88, 89, 101, 102, 108 to 111, 115, 116, 121, 148, 190, 191, 193, 195, 196, 198, 199, 203, 230 to 232, 234, 252, 273, 274, 276; items 1 and 2 of the Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007; item 1 of the Income Tax (Former Non-resident Superannuation Funds) Amendment Bill 2007; Schedule 1, items 5, 6 and 8 of the Income Tax Amendment Bill 2007; items 1, 2, 4, 5, 11, 12, 15 and 18 of the Income Tax Rates Amendment (Superannuation) Bill 2007*]

3.31 In updating some cross-references to Part IX of the ITAA 1936, especially those used for defining terms in other Acts, the actual substance of the definition from Part IX is included in the provision rather than referring to the new cross-reference in Division 295\* of the ITAA 1997 [*Schedule 1, item 353*]. In the updating process, a few inoperative provisions in other Acts were identified. These provisions are repealed [*Schedule 1, items 362 and 363*].

3.32 In rewriting Part IX of the ITAA 1936 and implementing other parts of *Simplified Superannuation*, various definitions are repealed, amended, or inserted into the Dictionaries in the ITAA 1936 and the ITAA 1997. Some definitions from Part IX of the ITAA 1936 are relocated within that Act, others are updated to reflect new terminology in the ITAA 1997. For instance, 'non-resident superannuation fund' has been changed to 'foreign superannuation fund' and 'resident superannuation fund' has changed to 'Australian superannuation fund', as these terms are more up-to-date and consistent with the terminology currently used in the ITAA 1997 for residency tests. Where new terms or concepts replace old terms or concepts, these are updated throughout both the ITAA 1936 and the ITAA 1997 accordingly. [*Schedule 1, items 1, 19, 23 to 25, 29 to 33, 99, 109 to 111, 128 to 133, 148, 189, 192, 195, 221, 232, 234 to 236, 242, 243, 252 and 258*]

3.33 The term ‘foreign superannuation fund’ already exists in the ITAA 1936 and the ITAA 1997 to a limited extent. Therefore this term is replaced with the term ‘superannuation fund for foreign residents’ to enable the term ‘foreign superannuation fund’ to be used to describe ‘non-resident superannuation funds’ (currently in section 6E of the ITAA 1936). The term ‘superannuation fund for foreign residents’ also more accurately describes the more restricted funds, as these are essentially foreign superannuation funds with foreign members. *[Schedule 1, items 27, 34, 100 and 147]*

3.34 Various other Acts also use terms which refer to definitions in Part IX of the ITAA 1936 that have been repealed or amended in the rewrite. These terms are also updated accordingly. *[Schedule 1, items 275, 344, 345, 352 and 353; item 1 of the Income Tax (Former Non-resident Superannuation Funds) Amendment Bill 2007; Schedule 1, items 4 and 7 of the Income Tax Amendment Bill 2007; items 8, 10, 13, 19, 21, 25 to 30 of the Income Tax Rates Amendment (Superannuation) Bill 2007]*

3.35 In the rewrite some defined terms were omitted and the substance of the defined term was outlined in the operative rule. One example is the term ‘eligible entity’. This term is no longer used in new Division 295\* of the ITAA 1997, the rest of that Act, or other Acts, instead the types of entities that were previously listed in the definition of ‘eligible entity’ are listed in the operative provisions (ie, ‘eligible entity’ is replaced with ‘complying and non-complying approved deposit fund, complying and non-complying superannuation fund and pooled superannuation trust’). *[Schedule 1, items 22, 28, 69, 70, 84 to 87, 98, 104, 107, 124 to 127, 134, 141, 200, 201, 202, 204; Schedule 1, item 3 of the Income Tax Amendment Bill 2007; items 4 and 5 of the Income Tax Amendment (Superannuation) Bill 2007]*

#### ***Unlimited amendment periods***

3.36 Unlimited amendment periods for amending assessments that were contained in Part IX of the ITAA 1936, are centralised into the table listing all unlimited amendment periods in subsection 170(10AA) of the ITAA 1936. *[Schedule 1, item 114]*

#### ***Updates to guide material***

3.37 Guide material in the ITAA 1997 is updated to refer to the new provisions of the ITAA 1997, including those concerning no-TFN contributions tax. *[Schedule 1, items 150, 153, 154, 156, 159, 165, 173 and 174]*

## **Application provisions**

3.38 The amendments outlined in this chapter apply to the 2007-08 and later income years. This is intended to preserve the operation of repealed provisions outlined in this chapter for the 2006-07 and previous income years. [*Schedule 1, item 406; item 2 of the Income Tax (Former Non-resident Superannuation Funds) Amendment Bill 2007; item 3 of the Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007; item 9 of the Income Tax Amendment Bill 2007; item 35 of the Income Tax Rates Amendment (Superannuation) Bill 2007*]

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# Chapter 4

## Other changes

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### Outline of chapter

- 4.1 This chapter outlines changes to assist in establishing a single access point for lost and unclaimed superannuation and a nationalised claims process.
- 4.2 It also outlines a new declaration that aims to ensure self-managed superannuation fund trustees, and directors of corporate trustees, understand their obligations and responsibilities as trustees under the superannuation laws and outlines some consequential changes to clarify collection arrangements for the self-managed superannuation fund supervisory levy.
- 4.3 Amendments to superannuation fund reporting requirements and indexation provisions and amendments to align the superannuation guarantee (SG) arrangements with provisions in bilateral social security agreements are also covered.

### Unclaimed money

4.4 Sections 16 and 17 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* currently require superannuation providers to give a half-yearly statement of unclaimed (superannuation) money to the Commissioner of Taxation (Commissioner). The monies are required to be paid to the Commissioner, at the end of each half-year. Section 18 of the Act relieves superannuation providers of their obligation to pay unclaimed money to the Commissioner where it is paid to a state or territory authority under legislation which satisfies the requirements in section 18.

4.5 Under the amendments private sector superannuation providers are no longer relieved of their obligation to pay unclaimed money to the Commissioner by paying it to a state or territory authority. Unclaimed money from these schemes is required to be paid to the Australian Government in accordance with sections 16 and 17 of the Act. Unclaimed money can only be paid to a state or territory authority if the money is from a state or territory public sector scheme and the relevant state or

territory law complies with the requirements in section 18 of the Act. [Schedule 3, items 58 and 59]

4.6 The amendments apply to statements required to be given under section 16 of the Act in respect of the half-year ending on 30 June 2007 and later half-years. [Schedule 3, item 60]

## Self-managed superannuation funds

### Additions to the law created by the Tax Laws Amendment (Simplified Superannuation) Bill 2006 (main Bill)

4.7 A new declaration is introduced to ensure self-managed superannuation fund trustees, and directors of corporate trustees, understand their obligations and responsibilities as trustees under the superannuation laws.

4.8 An individual who becomes a trustee or a director of the corporate trustee of a self-managed superannuation fund after 30 June 2007 must sign a declaration in the approved form stating that they understand their duties as trustee of a self-managed superannuation fund. The declaration must be signed no later than 21 days after becoming a trustee or director. [Schedule 3, item 54, paragraphs 104A(1)(a) and 104A(2)(a) of the Superannuation Industry (Supervision) Act 1993]

4.9 Existing trustees or directors of a corporate trustee must ensure that any trustee or director appointed after 30 June 2007 signs the declaration no later than 21 days after becoming a trustee or director. [Schedule 3, item 54, paragraphs 104A(1)(b) and 104A(2)(b) of the Superannuation Industry (Supervision) Act 1993]

4.10 All trustees or directors of a corporate trustee (including existing trustees or directors and trustees or directors appointed after 30 June 2007) must also ensure that the declaration is retained for as long as it is relevant (and in any case for at least 10 years) and make it available to the 'Regulator' if required. [Schedule 3, item 54, paragraphs 104A(2)(c) and (d) of the Superannuation Industry (Supervision) Act 1993]

4.11 Contravention of this provision is an offence of strict liability, with a maximum penalty of 50 penalty units. This is consistent with other record-keeping requirements in the Superannuation Industry (Supervision) Act 1993 and reflects the importance of ensuring trustees clearly understand their obligations and responsibilities. [Schedule 3, item 54, subsection 104A(3) of the Superannuation Industry (Supervision) Act 1993]

4.12 An administrative penalty of 20 penalty units under section 288-25 of the *Taxation Administration Act 1953* (TAA 1953) may also apply for a failure to keep the signed declaration.

### **Consequential changes**

4.13 Section 15DB of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* specifies when the supervisory levy for self-managed superannuation funds is due and payable. A reference to this section is added to the table of tax-related liabilities imposed under other legislation in subsection 250-10(2) of the TAA 1953. *[Schedule 1, item 385, item 67 in the table in subsection 250-10(2) of the TAA 1953]*

4.14 Under *Simplified Superannuation* the collection and recovery provisions of the TAA 1953 apply to the self-managed superannuation fund supervisory levy. The amendments repeal sections 15DD and 15DE of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* as these are duplicate provisions. *[Schedule 3, items 55 and 56]*

4.15 The amendments to the supervisory levy provisions apply for the 2007-08 income year and later income years. The repeal of sections 15DD and 15DE does not affect the Commissioner's ability to collect and recover the supervisory levy, and any penalty for the late payment of the levy, imposed under the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* in respect of the 2006-07 income year and earlier income years. *[Schedule 3, item 57]*

### **Reporting and indexation**

#### **Additions to the law created by the main Bill**

4.16 The approved form for a roll-over superannuation benefit may require the tax file numbers (TFNs) of the first superannuation provider and superannuation plan. In addition, if the member in respect of whom contributions are made, has quoted their TFN to the first superannuation provider, the approved form may also require the TFN of the member. This also applies if an individual making contributions on the member's behalf has legally provided the member's TFN to the first superannuation provider. *[Schedule 1, item 393]*

4.17 A note is included at the end of the guide to superannuation reporting requirements directing readers to the payment summary requirements in relation to superannuation lump sums and employment termination payments contained in section 16-165 of the TAA 1953. *[Schedule 1, item 392]*



4.18 The definitions of ‘indexation factor’ and ‘indexation number’ in the *Income Tax Assessment Act 1997* are amended to include a reference to the indexation provisions added to that Act as part of *Simplified Superannuation*. [Schedule 1, items 254 and 255]

4.19 To better clarify the policy intent, the superannuation indexation provisions are amended to refer to ‘financial year’ as well as ‘income year’, as the caps on superannuation contributions operate on a financial year basis. [Schedule 4, items 7 and 8]

4.20 A typographical error in an application provision of Division 298 of the TAA 1953 is corrected. [Schedule 4, item 12]

## **Superannuation double coverage**

### **Additions to the law created by the main Bill**

4.21 Australia has entered into a number of bilateral social security agreements with other countries, which include superannuation double coverage provisions. The aim of the superannuation provisions is to ensure that Australians sent to work temporarily overseas or non-residents sent to work temporarily in Australia are required to contribute (or have employer contributions made on their behalf) only to the pension/superannuation scheme in their home country.

4.22 The superannuation aspects of the agreements only operate when there is double coverage, that is, both countries must have compulsory contributory schemes that, without the Agreement, would both apply at the same time.

4.23 Broadly, the intent of the Agreements is that if an employee is sent from Australia to work temporarily (normally up to four years) in another country then the employee and their employer will be exempt from making contributions in the other country provided they remain covered by the SG law in Australia. To receive an exemption from the other country’s system the employer must receive a certificate of coverage from the Australian Taxation Office (ATO).

4.24 In some circumstances the SG law may not actually require the employer to continue to make the SG contributions in Australia for the employee while they are working overseas. This may arise if the employee ceases to be an Australian resident (which may occur after a two-year period overseas) or if the employee is working overseas for a related employer rather than the Australian resident employer.

4.25 Where a certificate of coverage has been issued by the ATO then the employer to whom the certificate relates is legally obliged to make SG contributions in Australia. *[Schedule 3, items 52 and 53]*

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Items 48 to 50, 74, 76, 77, 78, 123, 142, 143, 156, 163, 164, 166, 167, 168, 173, 177, 178, 186, 325, 326, 340, 381, 383, 402 and 403, subsections 24AYA(1), (3) and (7), 73B(1) and (20A), section 90 (definition of 'net income' and 'partnership loss'), subsection 262A(4A), subsections 57-40(1) and 57-50(1) in Schedule 2D to the ITAA 1936, sections 10-5, 12-5, 13-1 and 20-5, paragraphs 26-55(1)(d), 85-10(2)(f) and 85-10(2)(f) (Note) of the ITAA 1997, paragraph 1075(1)(c) and subparagraph 1185Y(3)(d)(iii) of the <i>Social Security Act 1991</i> , subsection 5(2) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> , section 45-340 in Schedule 1 (method statement, step 1, paragraph (g)) and section 45-375 in Schedule 1 (method statement, step 1, paragraph (f)) of the TAA 1953 and paragraph 46C(1)(c) and subparagraph 49Y(3)(f)(iii) of the <i>Veterans' Entitlements Act 1986</i>	1.56
Items 59 to 64, 226 and 227	2.23
Items 65 to 68	2.24
Items 71, 253 and 256, section 67AAA of the ITAA 1936 and subsection 995-1(1) of the ITAA 1997	1.55
Items 74, 76 and 206, subsection 73B(1) (definition of 'contributions to superannuation funds'), subsection 73B(20A) of	1.4

<i>Bill reference</i>	<i>Paragraph number</i>
the ITAA 1936 and subsection 290-60(1) (Note) of the ITAA 1997	
Item 114	3.36
Items 117 to 120	3.19
Items 145, 146 and 284 to 286	2.42
Items 150, 153, 154, 156, 159, 165, 173 and 174	3.37
Items 151, 152, 155 to 158, 160, 161, 169 to 173 and 175	2.42
Item 179, section 26-75 of the ITAA 1997	1.49
Item 179, section 26-80 of the ITAA 1997	1.50
Item 179, section 26-85 of the ITAA 1997	1.51
Item 183	2.19
Items 184 and 185	2.19
Items 194 and 197	2.29
Item 205, section 290-5 of the ITAA 1997	1.8
Item 207, subsection 290-150(2)	1.9
Items 208 to 211, section 292-390 of the ITAA 1997	1.31
Items 212 and 213	3.28
Item 214	3.8
Item 215	3.5
Item 216	3.6
Items 217 and 218	3.4
Items 219 and 269, section 304-15 of the <i>Income Tax (Transitional Provisions) Act 1997</i>	2.19
Items 222 and 223	2.19
Item 224	2.18
Item 225	2.18
Items 228 and 229	3.28
Item 233	3.28
Items 237, 238, 240, 257, 269, 351 and 375	2.30
Items 254 and 255	4.18
Item 261, subsection 292-25(1A) of the <i>Income Tax (Transitional Provisions) Act 1997</i>	1.17
Items 262 to 264, section 292-25 of the <i>Income Tax (Transitional Provisions) Act 1997</i>	1.16
Item 265, section 292-90 of the <i>Income Tax (Transitional Provisions) Act 1997</i>	1.20
Item 266, Subdivisions 295-B and 295-F	3.16
Item 266, Subdivision 295-F, subsection 295-390(6)	3.17

<b><i>Bill reference</i></b>	<b><i>Paragraph number</i></b>
Item 266, Subdivision 295-G	3.15
Item 266, subsection 295-190(1)	3.12
Item 266, subsection 295-190(2)	3.14
Item 269, section 306-10 of the <i>Income Tax (Transitional Provisions) Act 1997</i>	2.18
Item 270	2.18
Item 271	2.18
Item 272	2.18
Items 275, 344, 345, 352 and 353	3.34
Item 277	3.22
Item 278	3.21
Items 279 and 361	2.6
Items 280 and 281	3.23
Item 282	3.24
Item 283	3.25
Items 289, 290, 395, 396 and 401	2.35
Items 291, 293, 397 and 399	2.36
Items 292 and 398	2.37
Items 294 to 296	2.38
Items 297 to 324	2.41
Items 328 to 338	2.34
Item 341, paragraph 7(1)(b) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>	1.46
Items 342 and 343, paragraph 7(1)(c) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>	1.47
Items 344 and 345, subsection 995-1(1) of the ITAA 1997	1.48
Items 349 and 350	2.7
Item 353	3.31
Items 362 and 363	3.31
Item 366, subsection 8AAB(5) of the TAA 1953	1.30
Item 373	2.4
Item 384, subsection 250-10(2), Schedule 1 to the TAA 1953	1.34
Item 385, item 67 in the table in subsection 250-10(2) of the TAA 1953	4.13
Items 386 to 391, Division 280, Schedule 1 to the TAA 1953	1.29
Item 392	4.17
Item 393	4.16

<i>Bill reference</i>	<i>Paragraph number</i>
Item 394	3.26
Item 406	1.57, 1.58, 2.43 and 3.38

## **Schedule 2: Small business relief for CGT events**

<i>Bill reference</i>	<i>Paragraph number</i>
Items 1, 5 and 6, section 11-15, paragraph 152-310(2)(a) and subsection 152-310(5) of the ITAA 1997	1.41
Items 2, 7 and 8, paragraph 82-135(fa), subsections 152-325(3A) and (9) of the ITAA 1997	1.44
Item 3, paragraphs 152-305(1)(b) and (c) of the ITAA 1997	1.38
Items 4 and 6, subsections 152-305(1) (Note 2) and 152-310(4) of the ITAA 1997	1.40
Item 7, subsection 152-325(3A) of the ITAA 1997	1.45
Item 8, subsections 152-325(7) and (8) of the ITAA 1997	1.42
Item 9, subsection 290-150(4) of the ITAA 1997	1.7
Item 9, paragraph 290-150(4)(a) of the ITAA 1997	1.38
Item 9, paragraph 290-150(4)(b) of the ITAA 1997	1.43
Items 10 to 12, subsections 292-100(4) and (6) of the ITAA 1997	1.25
Item 12	1.36 and 1.57

## **Schedule 3: Other amendments**

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1	2.9
Items 1 to 3	2.12
Item 2	2.10
Items 4 to 7	2.5
Items 8 and 9	2.17
Item 10	2.16
Item 10, section 285-5 of the ITAA 1997	1.11
Items 11 and 12, paragraphs 290-85(1)(b) and (c) of the ITAA 1997	1.5
Items 13 and 14, subsections 290-85(1A) and (3) of the ITAA 1997	1.6
Item 15, subsection 290-180(3A) of the ITAA 1997	1.10

<i>Bill reference</i>	<i>Paragraph number</i>
Item 16, subsection 292-25(3) of the ITAA 1997	1.18
Items 17 and 18, paragraphs 292-90(1)(aa) and 292-90(4)(a) of the ITAA 1997	1.21
Item 18, paragraph 292-90(4)(b) of the ITAA 1997	1.22
Item 18, paragraph 292-90(4)(c) of the ITAA 1997	1.24
Items 19 and 20, paragraphs 292-100(2)(b) and 292-100(7)(b) of the ITAA 1997	1.26
Items 21, 24 and 25, paragraph 292-170(6)(d) and subsection 292-170(7) of the ITAA 1997	1.14
Items 22 and 23, section 292-170 of the ITAA 1997	1.15
Item 26, paragraph 292-330(b) of the ITAA 1997	1.33
Items 27 to 32 and 48 to 50, sections 292-410 and 292-415 of the ITAA 1997, sections 292-80B and 292-80C of the <i>Income Tax (Transitional Provisions) Act 1997</i>	1.27
Items 31 and 32, subparagraph 292-415(1)(c)(ii) and paragraph 292-415(2)(b) of the ITAA 1997	1.28
Items 33, 34 and 38 to 41	3.9
Item 35	2.19
Item 36	2.18
Item 37, paragraph 307-10(a) of the ITAA 1997	2.30
Item 37, paragraph 307-10(ab) of the ITAA 1997	2.13
Items 38 to 41	2.18
Items 42 and 43	2.18
Item 44	2.18
Item 45, section 290-15 of the <i>Income Tax (Transitional Provisions) Act 1997</i>	1.13
Items 46 and 47, paragraphs 292-80(3)(ea) and 292-80(3)(fa) of the <i>Income Tax (Transitional Provisions) Act 1997</i>	1.19
Items 52 and 53	4.25
Item 54, paragraphs 104A(1)(a) and 104A(2)(a) of the <i>Superannuation Industry (Supervision) Act 1993</i>	4.8
Item 54, paragraphs 104A(1)(b) and 104A(2)(b) of the <i>Superannuation Industry (Supervision) Act 1993</i>	4.9
Item 54, paragraphs 104A(2)(c) and (d) of the <i>Superannuation Industry (Supervision) Act 1993</i>	4.10
Item 54, subsection 104A(3) of the <i>Superannuation Industry (Supervision) Act 1993</i>	4.11
Items 55 and 56, sections 15DD and 15DE of the <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i>	4.14



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<i>Bill reference</i>	<i>Paragraph number</i>
Item 57	4.15
Items 58 and 59	4.5
Item 60	4.6
Items 61 and 62, section 14ZW of the TAA 1953	1.32
Items 63 to 65	2.4
Item 66	1.57 and 2.43

#### **Schedule 4: Technical corrections**

<i>Bill reference</i>	<i>Paragraph number</i>
Item 1	2.42
Item 2	2.42
Items 4 to 6	2.42
Items 7 and 8	4.19
Items 9 to 11	2.42
Item 12	4.20