SUBMISSION TO THE REVIEW "AUSTRALIA'S FUTURE TAX SYSTEM"

BY JOE WILLIAMS

The Howard Government promoted the new tax rules for superannuation which came into force last July as **simpler and fairer for all**.

This is **manifestly not so** as the Australian Tax Office has confirmed that superannuation income derived from overseas sources will continue to be taxed at marginal rates. So, for example, Australian citizens receiving a superannuation pension from the UK Civil Service or a UK Retirement Pension are subject to tax treatment of such income which **defies logic and is grossly discriminatory, anomalous and inequitable**. This may also be **unconstitutional** in that the tax treatment of superannuation pensions which are otherwise identical in nature varies between Australian citizens and taxpayers solely on the basis of the source of this income. Moreover, there was no mention of this difference in treatment according to superannuation source in the publicity on the new rules nor on the ATO website.

In contrast, the Terms of Reference for the AFTS Review, paragraph 2, states that 'Raising revenue should be done so as to…provide equity (horizontal, vertical and intergenerational)…'. There are also references in the TORs to '…ensuring that there are appropriate incentives for individuals to save and provide for their future…'(4.2) and to '…the government's policy to …preserve tax-free superannuation payments for the over 60s…' ((5). The document 'Architecture of Australia's Tax and Transfer System' (Section 3) continues this theme with discussion of 'rights based frameworks' for the tax system and of 'Horizontal equity (which) requires individuals in the same economic position to be treated the same by the tax-transfer system'.

These documents purport to set out the **base policy position** of the Australian Government on the tax treatment, *inter alia*, of superannuation income and yet are **totally at odds** with the current tax treatment of such income derived from overseas sources, notwithstanding that this is on all fours with superannuation from local sources.

Thus, Australian citizens and taxpayers (many of long standing; the total number affected could be significant)), who could reasonably have expected that their superannuation income from overseas sources would attract the 10% tax rebate or be tax free, have found that this is now subject to discriminatory and inequitable treatment, for which no explanation has been forthcoming.

It is difficult to understand the Howard Government's stance on this issue, particularly given the globalisation phenomenon and the increasing mobility of labour (especially professionals) around the world. More and more well qualified, young professionals are seeking employment abroad to gain experience before returning to Australia to work and, ultimately, retire. Governments in Australia must welcome the increased contribution to the economy that more experienced professionals like these make.

Most will invest in some form of superannuation fund whilst working overseas – will they suffer the same discriminatory and anomalous tax treatment on overseas derived superannuation pensions when they retire here? Clearly, this would not accord with the horizontal equity principle. I am sure that this is not something the Government should let happen, particularly as the number of superannuants in this situation is more likely than not to increase substantially.

It is, therefore, suggested that the **following issues** should be considered by the AFTS Review:

- **on what basis does the current tax treatment of superannuation pensions from overseas sources differ so detrimentally from that of pensions identical in nature derived in Australia?**

- **why does this discriminatory, anomalous, and inequitable treatment differ from the professed policy position (particularly on horizontal equity) set out in the Review's Terms of Reference and in the document 'Architecture of Australia's Tax and Transfer System'?**

- **is the current tax treatment of foreign sourced superannuation income unjustified?**

- **is it unconstitutional ?**

- **in the light of the professed, current Government taxation policy position enunciated specially for the purposes of the Review, since this treatment is no longer (and never has been) justified, should it be expeditiously reversed without waiting for the end of the AFTS Review in order to remove the injustice?**

Joe Williams
12 October 2008

ADDENDUM

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BY JOE WILLIAMS

It has been put to me that the investments from which foreign sourced superannuation pensions are derived are not subject to the same restrictions as Australian superannuation investments. The latter are subject to a range of investment requirements and obligations designed to limit the risks associated with such investments. In addition, contributions that can be made to superannuation funds are limited; and there are rules relating to the preservation of benefits until retirement.

Further, it has been argued that, as overseas retirement funds have not been subject to the same restrictions, nor accumulated in Australia, it would be inequitable to provide equivalent tax concessions on the benefits derived from such funds.

My understanding is that the Australian Commonwealth Superannuation Scheme has not been subject to all the restrictions mentioned, for example, contributions tax; yet pensions under this receive limited tax concessions. Moreover, I find it very difficult to believe that overseas superannuation funds are not subject to similar restrictions and obligations to those alluded to above. I therefore ask what research on this issue has been undertaken by the Australian Tax Office to underpin the Government's policy not to allow tax concessions to superannuation pensions derived from overseas sources?

If the Government's **policy** on the tax treatment of foreign sourced superannuation is as set out above, why does it allow it to be **breached** by providing for superannuation benefits transferred from an overseas fund to an Australian fund within six months of the beneficiary becoming an Australian resident to be free of tax! Once the benefits are in an Australian fund, they are recognised as having been accrued in the Australian superannuation system.

This is a blatant case of policy being internally inconsistent and discriminatory and a complete nonsense. If it applies (as I believe it does) to recent migrants who have not previously contributed to the Australian economy, it severely disadvantages those who have contributed by their residency and work in Australia over many years and whose superannuation benefits happened to commence to flow prior to the recent changes in the superannuation legislation. Such treatment would, no doubt, be contrary to International Conventions and Agreement on, and Instruments of Human Rights and may be class actionable.

I therefore respectfully request that the Review thoroughly investigate this policy inconsistency with a view to making a recommendation to allow all foreign sourced superannuation benefits to attract tax concessions.

Joe Williams