SUPERANNUATED COMMONWEALTH OFFICERS' ASSOCIATION

Submission to

AUSTRALIA'S FUTURE TAX SYSTEM

17 OCTOBER 2008

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"the proportion of the population aged 65 and over will nearly double to 25% by 2047"[1]

[1] Institute of Actuaries Retirement Incomes Taskforce

ABOUT THE SUBMISSION

SCOA appreciates the opportunity to make this submission to the Australia's Future Taxation System.

This submission looks at the tax system principally through the eyes and experience of persons who are aged 65 and above. SCOA has selected this group as most of its members and constituents fall into this category. SCOA has noted forecasts by the Institute of Actuaries Retirement Incomes Taskforce that the proportion of the population aged 65 and over will nearly double to 25% by 2047.

SCOA has made this submission because:

- There is a lack of security for taxpayers in current tax policy and administration;
- Commonwealth superannuation pensioners, in particular, are disadvantaged by current tax policy and administration;
- Previous Government inquiries that confirmed the unfair treatment have not been acted upon;
- The majority of Commonwealth superannuation pension recipients are not well off financially. The average ComSuper pension is around $23,000 per annum and in many instances this pension provides for two people. It is less than the married rate of age pension. Our member surveys tell us that the majority of these people have very little savings. The Pension Review background papers confirm this;
- Even with a top up of Age or other pension or allowance many Commonwealth superannuation pension recipients are struggling to survive;
- Most seniors find it impossible to prepare their own annual tax return because of the unfriendliness and lack of clarity in Tax Office publications, websites, etc, and in tax law generally, and especially that relating to capital gains;
- There are proposed changes to Commonwealth Seniors Health Card eligibility;
- There is a need to rethink the 'Work Test', and age based eligibility to contribute to superannuation.

This submission has been authorised by SCOA's Federal President, Dr Annette Barbetti. Inquiries in relation to the submission may be directed to Federal Secretary, Ms Marita Linkson, ph. (02) 6286 7977, email: fedsec@scoa.asn.au.

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EXECUTIVE SUMMARY

SCOA's longer term aim is to have a tax system whereby the majority of individual taxpayers no longer need to submit an annual tax return.

The submission highlights the 'unfriendliness' of the existing tax system in relation to retirees and notes some of the generic difficulties it poses for taxpayers.

It specifically draws attention to the unfairness to retirees in so-called 'untaxed' superannuation funds', most of whom are former Commonwealth and Defence Force employees who are now receiving Commonwealth superannuation pensions from ComSuper (approximately 200,000 people).

SCOA has made recommendations in the following subject areas:

- Taxation inequities in relation to superannuation
- Improving certainty for taxpayers
- Taxation issues specifically affecting retirees
- Provision and operation of taxation resources and taxation support systems.

Summary of Recommendations

Inequitable Tax Treatment for CSS and PSS benefits that accrued before 1 July 1988

Recommendation 1. Remove the inequitable tax treatment for CSS and PSS defined benefit pensioners and lump sum recipients by specifying that CSS and PSS benefits that accrued before 1 July 1988 be treated as element taxed in the fund.

Inequitable Tax on Additional Non Superannuation Income for those aged 60 and over

Recommendation 2. Exclude income streams from untaxed sources as assessable income when applying taxation to non-superannuation income (i.e. an income stream from an untaxed source is treated as special income and taxed separately from other income).

Alternatives to Better Super's Ten Percent T*ax rebate*

Recommendation 3. Deem CSS and PSS defined benefit superannuation schemes to be 'taxed' super funds, so that pensions from these funds are tax free: OR Replace the current 10% tax offset with a $20,000 tax deduction.

Restrictions on Contributions to Superannuation

Recommendation 4. Provide opportunity for persons receiving a Carers Pension to contribute to superannuation.

Recommendation 5. Abolish the work test and age restrictions in relation to making contributions to superannuation.

Report on aspects of Income Tax Self Assessment (ROSA) – August 2004

Recommendation 6. Implement the recommendations of the Report on aspects of Income Tax Self Assessment of August 2004 to improve certainty for taxpayers, to mitigate interest and penalty consequences of taxpayer errors and provide future improvements.

Periods of Review and Retention of Records

Recommendation 7. Simple Tax returns should have immediate clearance (no period of review).

Recommendation 8. Periods of Review should not exceed two years, and Assessment Notices should clearly indicate the retention period.

'Safe harbour' for Taxpayers using Tax Agents

Recommendation 9. Apply a 'safe harbour' for taxpayers who are using tax agents (this could be extended to cover taxpayers using 'Tax Help').

Commissioner's Undertaking

Recommendation 10. Review the Commissioner's undertaking in TaxPacks and e-tax to provide more certainty for taxpayers.

Capital Gains Tax

Recommendation 11. Replace the current capital gains tax regime with that which has operated successfully for many years in the United Kingdom. The UK system has a ten-year life with a stepped rate of capital gains tax adjusted on a year- by-year basis.

Double Taxation

Recommendation 12. Remove all instances of double taxation.

Proposed Carbon Taxes

Recommendation 13. Investigate the possibility using the tax system to provide relief from proposed carbon taxes.

e-tax

Recommendation 14. That the ATO gives priority to ensuring that correct in-fill data is provided for all relevant tax return entries.

Recommendation 15. That the ATO provide a version of e-tax that can be used on Apple Mac computers, using Apple Mac operating systems and software.

ATO Website

Recommendation 16. Review and improve the ATO website to better meet individuals' needs.

Tax Office Advisory Groups

Recommendation 17. Retain tax office advisory groups such as PTAG and establish similar groups within Treasury to support effective policy establishment and review.

TAX IN RELATION TO SUPERANNUATION

SCOA acknowledges that some improvements have arisen from *Better Super.* SCOA is concerned, however, about its application to defined benefit 'untaxed' Commonwealth superannuation schemes and resultant pensions because for these schemes, the *Better Super* provisions are discriminatory and inequitable, and significantly affect disposable income. Findings noted in the Senate Standing Committee on Economics report of February 2007 on the review of 'Tax Laws Amendment (Simplified Superannuation) Bill 2006 (Provisions)' and related bills supported SCOA's concerns; however none of the committee's recommended changes has been implemented.

Inequitable Tax Treatment for CSS and PSS benefits that accrued before 1 July 1988

Recommendation 1*. Remove the inequitable tax treatment for CSS and PSS defined benefit pensioners and lump sum recipients by specifying that CSS and PSS benefits that accrued before 1 July 1988 be treated as element taxed in the fund.*

Tax applied to unfunded CSS pensions that have an accrual period before 1 July 1988 is inequitable when compared to the tax being applied to pensions from other non Commonwealth unfunded superannuation schemes. The inequity arises out of the inability to apply Pre 1 July 1988 Funding Credits to CSS superannuation retirement benefits. The same situation applies to the unfunded component of PSS defined benefit pensions.

The *Income Tax Assessment Act 1997* contains a provision to allow unfunded superannuation schemes to utilise Pre 1 July 1988 Funding Credits. Our understanding is that this mechanism is designed to ensure that superannuation benefits that accrued before 1 July 1988 in an unfunded superannuation scheme are regarded as if they were funded from a taxed source and accordingly taxed as an element taxed. This prevents benefits that accrued before 1 July 1988 from being taxed as untaxed benefits. This is necessary as tax was not applied to superannuation funds (earnings or contributions) before 1 July 1988 and accordingly no taxes were applied to such accruals in funded or unfunded superannuation schemes.

A good description of the purpose of Pre 1 July 1988 Funding Credits was provided at paragraph 9.2, Chapter 9 of the Explanatory Memorandum to the *Tax Laws Amendment (2006 Measures No. 3) Act 2006.* The paragraph states:

> "9.2. Since 1 July 1988 most contributions (e.g., employer and other deductible contributions) to superannuation schemes have been subject to a 15 per cent tax. Funding credits were granted to unfunded superannuation schemes so that contributions made after 1 July 1988 to fund benefits that accrued prior to 1 July 1988 are not taxed. This ensures equity with funded superannuation schemes which only pay tax on contributions from 1 July 1988."

However, in regard to CSS and PSS superannuation benefits there is no mechanism to ensure equity with funded superannuation schemes with regards to benefit accruals before 1 July 1988. Pre 1 July 1988 Funding Credits cannot be used by the Trustee and as a result when benefits are paid out of the CSS or PSS the component of the payment that accrued before 1 July 1988 is taxed as if it was paid from an untaxed superannuation scheme.

Unfunded State Superannuation Schemes have been able to utilise Pre 1 July 1988 Funding Credits to ensure that tax is applied equitably against the payment of their superannuation benefits.

The reason why Pre 1 July 1988 Funding Credits cannot be applied in the CSS and PSS appears to be due to the way the Commonwealth chose to pay CSS and PSS retirement benefits. The Trustees of unfunded State Superannuation Schemes chose to pay their superannuation benefits out of their superannuation fund after receiving unfunded contributions from the employer at the time of retirement or benefit payment. When the unfunded employer contribution is paid into the superannuation fund at the time of benefit payment, no contributions tax is paid on that part of the employer contribution that is funding accruals before 1 July 1988, as the tax that would have been paid on those employer contributions is offset by Pre 1 July 1988 Funding Credits. Therefore, even though benefits that accrued before 1 July 1988 were not funded until the time of retirement or benefit payment, and with no contributions tax effectively being paid on those employer contributions (a similar arrangement to the CSS and PSS), the benefit payment is regarded as being paid from a taxed source and taxed accordingly.

The difference between the CSS and PSS and other unfunded superannuation schemes that are entitled to utilise Pre 1 July 1988 Funding Credits is that the Commonwealth Government chose to pay CSS retirement benefits out of Commonwealth revenue rather than out of the CSS superannuation fund. That is, when a benefit becomes payable the member's accumulated member and productivity contributions in the CSS and PSS superannuation funds are paid out of the CSS and PSS superannuation funds into Commonwealth revenue. The Commonwealth then adds employer contributions to the payment and pays the CSS or PSS superannuation benefit to the benefit recipient. This process is prescribed in section 112 of the *Superannuation Act 1976* and section 16 of the *Superannuation Act 1990*.

By paying superannuation benefits in the reverse way to unfunded State Superannuation funds, the Commonwealth actually pays no employer contributions into the CSS or PSS superannuation fund, and therefore generates no contribution tax liability to enable Pre 1 July 1988 Funding Credits to offset that tax liability. The result is that unfunded pre 1988 accruals in the CSS and PSS are element untaxed and taxed accordingly, while unfunded pre 1 July 1988 accruals in other unfunded superannuation funds are regarded as element taxed and not subject to tax where the recipient is aged 60 and over.

The method of paying CSS and PSS superannuation benefits is grossly unfair especially as the Commonwealth Government has set up a mechanism so that benefit recipients of other unfunded superannuation schemes can receive equitable tax treatment compared to those in funded superannuation schemes. CSS and PSS superannuation scheme benefit recipients miss out on equitable tax treatment of their

superannuation benefits only because the Commonwealth Government chose to pay superannuation benefits through the Consolidated Revenue Fund rather than through the CSS or PSS superannuation fund. There is no difference in the end result irrespective of the payment mechanism other than the loss of the application of Pre 1 July 1988 Funding Credits. Accordingly, we believe that there is no reason why CSS and PSS benefit recipients should not be taxed in the same way as other recipients of unfunded superannuation schemes in respect of their unfunded superannuation benefits that accrued before 1 July 1988.

A possible solution to correct the inequitable tax treatment applied to some CSS and PSS benefit recipients would be for the Government to make regulations in accordance with division 307 of the *Income Tax Assessment Act 1997* to specify that CSS and PSS benefits that accrued before 1 July 1988 be treated as element taxed in the fund. This would have the same affect as applying Pre 1 July 1988 Funding Credits to the CSS and PSS in respect of benefits that accrued before 1 July 1988. This would then enable a fair and equitable tax treatment to apply to CSS and PSS benefits as intended for other unfunded superannuation schemes through the application of Pre 1 July 1988 Funding Credits.

Inequitable Tax on Additional Non Superannuation Income for those aged 60 and over

Recommendation 2. ***Exclude income streams from untaxed superannuation sources as assessable income when applying taxation to non-superannuation income (i.e. an income stream from an untaxed superannuation source is treated as special income and taxed separately from other income).***

The tax treatment of additional non superannuation taxable income applied to a person receiving an element untaxed superannuation income stream is inequitable when compared to a person receiving an element taxed superannuation income stream.

For example, a recipient of a superannuation pension from a taxed source will not pay any tax in respect of their superannuation pension irrespective of the amount of the superannuation pension being received. In addition, the income from the superannuation pension will be exempt income and not be counted with any other non-superannuation income to determine the marginal tax rate to be levied on any other non-superannuation income. On the other hand, where the superannuation pension is paid from an untaxed source, (mostly Commonwealth superannuation pensions) the amount of that pension will be added to the non-super income and therefore will be counted in determining the recipient's marginal tax rate on any non-super income. As a result, a higher marginal tax rate will generally be levied against any additional non-superannuation income. This is illustrated in the following table.

Type of income	Superannuation income stream element tax	Superannuation income stream element untaxed
Superannuation pension	$40,000	$40,000
Non-superannuation income	$20,000	$20,000
Total income	$60,000	$60,000
Tax	$ 1,169	$ 8,900
Net income	$58,831	$51,100
Tax on $20,000 non superannuation income	**$ 1,169**	**$ 7,100**

The additional $20,000 non superannuation income for the recipient receiving a superannuation income that is element untaxed is taxed at the rate of 35.5%. The tax is as follows:

30% marginal tax rate $20,000 × 30% =	*$6,000*
4% tax rate for loss of low income tax offset $20,000 × 4% =	$ 800
1.5% Medicare levy $20,000 × 1.5% =	$ 300
Tax on additional $20,000 non superannuation income	**$7,100**

While the additional $20,000 non superannuation income for the recipient receiving a superannuation income that is element taxed is taxed at the rate of 5.8%. The tax is as follows:

0% marginal tax rate for $6,000, $6,000 × 0% =	$ 0
15% marginal tax rate for $14,000, $14,000 × 15%=	$2,100
Less full low income tax offset =	$1,200
Reduced Medicare levy =	$ 269
Tax on additional $20,000 non superannuation income =	**$1,169**

Non-superannuation income received by recipients with a superannuation pension from an untaxed source, as illustrated in the above table, is taxed at the marginal tax rate of 30%, plus an extra penalty of 4 cents in the dollar due to the reduction in the low income tax offset and the liability for the full Medicare levy.

This does not produce an equitable result between the recipients of the two pensions, especially in regard to the marginal tax rate applied to non-superannuation income and the reduction in the low income tax offset.

To make the tax applied to non superannuation income more equitable between those receiving income streams from taxed and untaxed sources, it is suggested that the income stream from an untaxed source be separated out as special income and taxed separately and not treated as assessable income when taxing non-superannuation income.

Alternatives to Better Super's Ten *Percent* Tax Rebate

Recommendation 3*. Deem CSS and PSS defined benefit superannuation schemes to be 'taxed' super funds, so that pensions from these funds are tax free OR Replace the current 10% tax offset with a $20,000 tax deduction.*

SCOA has been unable to obtain the reasoning supporting the regressive ten percent tax rebate for CSS and PSS defined benefit pension recipients. It provides no benefit for members on a low income, and so SCOA has been seeking other options.

1. SCOA's first preference would be for legislation to be passed so that CSS and PSS defined benefit funds would be deemed to be taxed super funds meaning that their pensions would be tax free. This has been illustrated above.

2. SCOA's second preference would be to replace the 10% rebate with a $20,000 tax deduction. SCOA believes this would be more equitable than the current 10% rebate.

   The following examples illustrate the effect of this change for a single person. They have been prepared using the 2007-08 tax tables (results would not differ greatly had the 2008-09 tax tables or married rates been used).

   Example 1. ComSuper pension $30,000, income from part-time job $20,000
   Tax payable under current arrangements (Better Super and 10 % rebate) = $6,100 (taking into account Mature Age Workers Tax Offset)
   Tax payable under proposed arrangement (Simpler Super and $20,000 tax deduction) = $636
   Saving = $5,464

   Example 2. ComSuper pension $23,000, income from PT job $20,000
   Tax payable under current arrangements (Better Super and 10 % rebate) = $4,700 (taking into account SATO, LITO & MAWTO)
   Tax payable under proposed arrangement (Simpler Super and $20,000 tax deduction) = zero
   Saving = $4,700

   Example 3. ComSuper pension $45,000, income from PT job $20,000
   Tax payable under current arrangements (Better Super and 10 % rebate) = $9,600
   Tax payable under proposed arrangement (Better Super and $20,000 tax deduction) = $8,100
   Saving = $1,500

   Example 4. ComSuper pension $65,000, income from PT job $20,000
   Tax payable under current arrangements (Better Super and 10 % rebate) = $14,600
   Tax payable under proposed arrangement (Better Super and $20,000 tax deduction) = $13,500
   Saving = $1,100

   Almost all recipients of ComSuper pensions would be better off, with people with pensions around the $30,000 mark benefiting most. Benefits are detailed below:

   i. The proposed change would provide an incentive for retired public servants to return to part-time work in areas where there is a shortage of labour, because it would lower their effective marginal tax rate on employment income.

   ii. It would not affect the size of the Government's unfunded pension liability.

   iii. For a person with a ComSuper pension of $30,000 or more, they would effectively be paying no tax on the first $20,000 they earned in a part-time job. However, any additional income in excess of $20,000 would be taxed at the appropriate marginal tax rate.

iv. People who returned to work would satisfy the work test and would be able to contribute to their own superannuation past the age of 65 and hence would be less reliant on the Age Pension in later life.

v. It would be easier to incorporate into the existing tax system than any other way of trying to separate out additional income into a separate head of taxation, (just add one item to the tax form).

vi. By choosing the right size for the deduction (eg, $25,000), the unfairness to Commonwealth Superannuants in the treatment of their additional income vis a vis that earned by people in taxed super funds could be minimised.

Restrictions on Contributions to Superannuation

Recommendation 4*. Provide opportunity for persons receiving a Carers pension to contribute to superannuation.*

Within the community there are a lot of people who have had to forego work to undertake carer duties. This could be for a disabled child/relative or an elderly parent.

SCOA understands that the time these carers spend on caring duties is not deemed to satisfy the work test for superannuation contribution purposes and feels that this is grossly unfair and inequitable and needs to be corrected.

These people are being penalised three times because they have chosen to or been forced to perform carer duties. Firstly, they derive significantly lower income as a carer than if they were in the workforce. Secondly, they are deprived of the opportunity to make contributions to superannuation because they do not meet the work test. Thirdly, they are being deprived of the opportunity to be self sufficient in retirement or to supplement the Age Pension. Without these carers, a significant burden would fall on Federal and State Governments to provide the necessary care for many thousands of Australians.

Recommendation 5*. Abolish the work test and age restrictions in relation to making contributions to superannuation.*

It would be beneficial to all concerned if there were fewer restrictions on a person's ability to contribute to superannuation.

Successive governments say they want people to work longer and provide for their retirement, yet they impose unnecessary restrictions that strongly discourage people from fully pursuing these paths.

CERTAINTY FOR TAXPAYERS

A major concern for SCOA and its constituents is the very low level of certainty for taxpayers in the current tax system. SCOA believes that significant improvements to tax payer certainty should be a high priority, and has been advocating for this through its long term membership of the Australian Tax Office's Personal Tax Advisory Group.

Report on aspects of Income Tax Self Assessment (ROSA) – August 2004

SCOA is disappointed and concerned that actions proposed by the ROSA Review, which would have improved certainty for taxpayers, have not been implemented.

Recommendation 6. ***Implement the recommendations of the Report on aspects of Income Tax Self Assessment of August 2004 to improve certainty for taxpayers, to mitigate interest and penalty consequences of taxpayer errors and provide future improvements.***

Self Assessment Background
Since 1986/87, Australia has operated a system of self assessment of income tax, under which taxpayers' returns are accepted at face value in the first instance and then the Tax Office may subsequently verify the accuracy of the information in the return within a prescribed period after that initial assessment. From 1989-90, the returns of companies and superannuation funds also became subject to a system of self assessment.

By the early 1990's, problems had been identified with the initial self assessment arrangements, particularly in relation to penalties and interest, and the need to provide greater taxpayer certainty. Some changes were subsequently made, but they have done little to improve certainty for taxpayers.

The RoSA Review, announced in November 2003 was conducted to examine aspects of Australia's self assessment system for income tax to determine whether the right balance had been struck between the rights of individual taxpayers and protecting the revenue benefit for the whole Australian community.

The most important recommendations from the review were to:

- improve certainty through providing for a better framework for the provision of Tax Office advice and introducing ways to make that advice more accessible and timely, and binding in a wider range of cases;
- improve certainty by reducing the periods allowed to the tax Office to increase a taxpayer's liability in situations where the revenue risk of doing so is low or manageable;
- mitigate the interest and penalty consequences of taxpayer errors arising from uncertainties in the self assessment system; and
- provide for future improvements through better policy processes, law design and administrative approaches.

Periods of Review and Retention of Records

Current periods of review and record keeping requirements, as determined by the Australian Tax Office are at Attachment A.

Recommendation 7. ***Simple Tax returns should have immediate clearance (no period of review)***

SCOA believes that for extremely simple tax returns, such as where the return is prepared solely to receive return of imputation credits or withheld tax, no audit period should be necessary.

Recommendation 8. ***Periods of Review should not exceed two years, and Assessment Notices should clearly indicate the retention period.***

With the sophisticated matching being undertaken by the Tax Office and the move to pre-population of tax returns, a maximum period of review of two years should be introduced. This should also apply also to tax returns that include capital gains. This would introduce more certainty for taxpayers with regard to the retention of documentation supporting their tax returns.

It would be helpful if Assessment Notices clearly indicated the retention period. 2008 Assessment Notices advise the taxpayer to consult the Tax Office website; this is not practical for many taxpayers. The TaxPack warns that if you do not retain supporting documents for the necessary period, that you may incur a penalty. This, along with the practice of some tax agents and some Tax Office documents of nominating a five year retention period, contributes to taxpayer uncertainty.

Given that for most taxpayers there is currently a maximum period of two years in which the Tax Office can amend a return, the current requirement to retain supporting documentation for five years (in all instances) seems unjustifiable. SCOA feels therefore, that the retention period for the bulk of individual returns should be no more than two years. In the case of the very simple returns, no retention period should be necessary.

Setting a two-year maximum retention period would simplify the responsibilities for taxpayers aged 65 and over, and remove the long periods of uncertainty associated with the current periods of review. It would also help to overcome the current problem of older people misplacing or losing supporting documentation (such as receipts).

SCOA suggests that immediate action needs to be taken to implement the ROSA recommendation, and notes the Tax Office's quote re their ability to accommodate shorter periods of review:

In its January 2006 edition of the publication *Making it Easier to Comply*, the Tax Office included the following:

> *'Shorter periods of review can be accommodated without a corresponding increase in risk to the revenue partly because our compliance activities are becoming more targeted and timely, particularly for taxpayers with more straightforward tax affairs. New systems and techniques will progressively support a move towards more real time compliance work, enabling us to more quickly identify emerging risks and, conversely, low-risk taxpayers – and treat them accordingly.*
>
> *This is expected to enable us to go beyond ROSA recommendations for shorter periods of review. Our goal is to be able to advise low-risk taxpayers shortly after we send them their notice of assessment that*

their tax affairs for the year are closed, and that we will not be undertaking any further review.'

'Safe harbour' for Taxpayers using Tax Agents

SCOA is concerned about the unfairness and uncertainty surrounding the current law and practices in relation to Tax agents, and has been making representations for change and fairness for more than a decade. The issues are:

- the lack of protection for taxpayers;
- too much protection for tax agents;
- taxpayers having to pay shortfall tax penalties in situations where they had fully complied with requirements and the error that led to the penalty was made by the registered tax agent;
- the need for natural justice; and
- the ever increasing complexity of personal tax, superannuation tax and capital gains tax legislation and requirements.

Recommendation 9. ***Apply a 'safe harbour' for taxpayers who are using tax agents (this could be extended to cover taxpayers using 'Tax Help').***

Below are some relevant excerpts from The Report on Aspects of Income Tax Self Assessment (ROSA):

> *Under the existing law, as before self assessment, taxpayers are responsible for errors in returns made by their tax agents. There are currently no penalties directly for agents, although criminal offence provisions can apply to them.*
>
> *On 6 April 1998, the then Assistant Treasurer, Senator the Hon Rod Kemp, announced that the government had approved a new legislative framework for tax agents. He said that:*
>
> > *'The proposals will give taxpayers who engage a tax agent a 'safe harbour' from penalties, providing they exercise reasonable care in furnishing all the relevant taxation information to their tax agent.*
> >
> > *There will be no sanctions against tax agents who meet a defined standard of reasonable care in the preparation of tax returns ... Instead the tax agent may be subject to a disciplinary measure.'*
>
> *At the request of industry representatives, the then Government deferred the implementation of that announcement. There have been recent consultations between government officials and industry representatives about giving effect to this decision, in the context of developing a framework for regulation of tax agent services.*
>
> *As these issues are well advanced through a separate process the Review makes no recommendation in relation to them.*

On 29 May 2008, the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen, released for public comment a further exposure draft package that will reform the registration and regulation of entities providing tax agent and BAS services for fees. Chapter 6 – *Relief from certain administrative penalties for taxpayers who engage a tax agent or BAS agent*, outlines provisions to improve certainty for taxpayers. Specifically, paragraph 6.13 provides as follows:

> *'Item 4 of Schedule 1 to the consequential and transitional exposure draft amends the administrative penalty provisions in Schedule 1 to the TAA 1953 to provide that:*
>
> - *taxpayers who demonstrate that they have taken reasonable care by engaging a tax agent or BAS agent and providing them with all relevant taxation information are not liable for penalties for the agent's careless errors; and*
> - *taxpayers who engage a tax agent or BAS agent and provide them with all relevant information to enable the agent to give a document to the Commissioner on behalf of the taxpayer in the approved form and by a particular day are not liable for penalties where the tax agent fails to do so due to the agent's carelessness*.'

In a letter to the Treasury dated 20 June 2008, SCOA indicated it was pleased that the Bills and Regulations had reached their present stage, as SCOA had been concerned for some time about the lack protection for taxpayers. SCOA indicated that it strongly supported the proposed amendments, but added that similar amendments had been proposed on a number occasions and had failed to proceed further.

In its response to Treasury, SCOA suggested that the 'safe harbour' provisions should also apply where a taxpayer uses the Tax Office's Tax Help program. Tax Help practitioners are trained by the Tax Office and have access to Tax Office specialists, so taxpayers who use this service should not be held responsible for errors made by these practitioners.

SCOA therefore strongly urges that the draft legislation be afforded priority treatment and that the 'safe harbour changes' be extended to cover taxpayers who use the Tax Help program.

SCOA surveyed some of its constituents about why they use a registered tax agent or a TAX HELP practitioner rather than complete the tax return themselves. The results are at Attachment B.

These older taxpayers were most concerned that they have to pay tax agents between $200 and $280 to have their tax returns prepared. Given that they have low incomes it is difficult to find this sort of money.

Commissioner's Undertaking

Recommendation 10. ***Review the Commissioner's undertaking in TaxPacks and e-tax to provide more certainty for taxpayers.***

SCOA believes that it is important that there be a Commissioner's undertaking. However, it is concerned that it is written in such a way as to provide a lot of 'outs' for the Commissioner and the Tax Office and therefore fails to fully afford necessary protections to tax payers who use advice provided by the Tax Office.

SCOA believes that if a tax payer is provided advice by the Tax Office and that advice turns out to be erroneous, that the Tax Office should make assessments based on its original advice. The tax payer should not have his/her return amended to accord with the amended Tax Office advice.

SCOA is concerned about the number of times that the Commissioner's undertaking uses the words 'may not'.

SCOA would like to see the Commissioner's undertakings reviewed to provide more certainty for more taxpayers.

OTHER TAXATION CONSIDERATIONS

Capital Gains Tax

SCOA members and constituents find the current capital gains tax regime to be extremely costly, because its complexity requires them to engage a tax agent to work out their capital gains and losses.

Recommendation 11. ***Replace the current capital gains tax regime with that which has operated successfully for many years in the United Kingdom. The UK system has a ten-year life with a stepped rate of capital gains tax adjusted on a year- by-year basis.***

SCOA understands that in many cases, members' shares and other holdings have been acquired through demutualisations and inheritances, which means they may not have all of the associated documentation; and most do not have a day-to-day working knowledge of the capital gains tax regime.

Apart from its complexity, the current system fails to take into account the fact that people move more often than in the past and often into living arrangements where they have limited space and storage. In addition, with people living longer, often meaning that their health and senses are deteriorating, they are more likely to reach a point in life where they become incapable of properly managing their affairs.

It is noteworthy that the Report on Aspects of Income Tax Self Assessment contains the following:

> *'Submissions commented that significant compliance cost savings could be achieved if some of the more onerous record keeping obligations were streamlined, particularly in the areas of fringe benefit tax, motor vehicle log books, uniform capital allowances, substantiation, non-commercial losses, transfer pricing and capital gains tax.'*

As mentioned earlier most SCOA members and a significant number of constituents are aged 65 or older – some nearing 100.

SCOA would like the current capital gains tax regime replaced with that which has operated successfully for many years in the United Kingdom. The UK system has a ten-year life with a stepped rate of capital gains tax adjusted on a year- by-year basis. At the end of year ten, capital gains tax liabilities cease. This change would remove the pre-1985 distinction, and would enable significant simplification of the capital gains tax rules.

Until 1999, the cost bases of assets were indexed to avoid taxing nominal gains when real economic losses occur. Cessation of that policy in 1999 was in SCOA's view, unfair and unwarranted. For example, the taxation of nominal capital gains increases the effective rate of taxation on real capital gains. So if inflation is running at three percent, then an asset that increases by two per cent will be subject to taxation despite the asset's price falling in real terms.

SCOA understands that capital gains are disproportionately realised by older people, which means that capital gains tax is therefore a tax on the aged[2]. It is mainly due to older people putting off disposing of assets because they are concerned about the amount of capital gains tax they will have to pay, and are concerned that they do not have the money to pay this tax. They are also put off by the process.

Moving to a system such as that in the United Kingdom, would significantly reduce the level of administration, and would not affect the current asset and income test systems applying to Centrelink benefits.

Double Taxation

SCOA and its members were of the view that double taxation would cease after set periods of grace following the introduction of the GST.

Recommendation 12. ***Remove all instances of double taxation.***

There continues to be instances of double taxation. They are eating into the limited retirement income of SCOA's constituents. The double taxation applying to insurance is of particular concern.

SCOA would like all instances of double taxation removed.

Proposed Carbon Taxes

Recommendation 13. ***Investigate the possibility using the tax system to provide relief from proposed carbon taxes.***

SCOA members are concerned about the likely introduction of carbon taxes on gas and electricity producers. Such taxes would inevitably be passed on to consumers, resulting in increases in utility bills. The possibility of providing relief through the tax system should be investigated.

[2] Report to the Australian Stock Exchange in 1999 by Reynolds, entitled '*Capital Gains Tax: Analysis of Reform Options for Australia.*'

TAXATION RESOURCES AND SUPPORT SYSTEMS

e-tax

Recommendation 14. ***That the ATO gives priority to ensuring that correct in-fill data is provided for all relevant tax return entries.***

SCOA is supportive of the priority afforded by the Tax Office to those who use e-tax. However, given that only around 50% of SCOA's membership and constituency have a computer, and an even lower percentage are computer and e-mail literate, there will be a need to retain paper systems, including tax packs, for the foreseeable future.

SCOA members and constituents have identified many problems arising from trying to use e-tax, including having to amend incorrect in-fill material. They have found that they have had to revert to paper returns to fulfil their obligations. Having said that, SCOA supports the in-fill system but notes that it will only provide security when the Tax Office is able to provide correct in-fill data on all items of tax returns.

Recommendation 15. ***That the ATO provide a version of e-tax that can be used on Apple Mac computers, using Apple Mac operating systems and software.***

SCOA would like the Tax Office to provide a version of e-tax that can be used by people with Apple Mac computers using standard Apple Mac operating systems and software.

ATO Website

Recommendation 16. ***Review and improve the ATO website to better meet individuals' needs.***

SCOA members and constituents are critical of the inability of the current website to meet their needs. They have indicated that entry through 'Google' is better than via direct entry. Given the emphasis that the Tax Office places on people visiting the website, high priority should be given to substantially improving or replacing it.

Tax Office Advisory Groups

Recommendation 17. ***Retain tax office advisory groups such as PTAG and establish similar groups within Treasury to support effective policy establishment and review.***

SCOA is very supportive of the continuance of tax office advisory groups such as the Personal Tax Advisory Group (PTAG) and feels that they should be retained. SCOA is a member of PTAG, and as a result of this membership, is better able to assist its members and constituents.

SCOA would like to see similar groups established within Treasury to assist with its review of existing policies and testing and development of policies under consideration. SCOA is concerned that many of the problems being experienced by

the Tax Office and other agencies and by Australian residents in attempting to meet their obligations under government policies could be avoided through the use of advisory groups and stronger mechanisms within the Tax Office and Treasury to review and alter defective policies.

In a nutshell, SCOA is concerned that too many new policies and amendments to existing policies are developed in a vacuum without sufficient consideration for the people and/or the agencies that have to use and/or administer them.

ATTACHMENT A: Periods of Review and Record Keeping Requirements

The following table, from the ATO website, sets out the periods of review and record keeping requirements for income tax assessments:

Taxpayer/assessment	Period of review	Record keeping requirement
Individuals Applies to the majority of individual taxpayers, unless excluded (see below for exclusions)	Two years	Five years* from when you lodged your tax return^.
Small business entities From the 2007-08 income year**, applies to the majority of small business entities unless excluded (see below for exclusions)	Two years	Five years* from when the business record is prepared or the transaction is completed, whichever occurs later.
Simplified tax system **(STS) taxpayers** Applies to the majority of taxpayers in the STS for income years 2004-05 to 2006-07 inclusive**, unless excluded (see below for exclusions)	Two years	Five years* from when the business record is prepared or the transaction is completed, whichever occurs later.
All other taxpayers The majority of other taxpayers, including business and sole trader taxpayers	Four years	Five years* from when the business record is prepared or the transaction is completed, whichever occurs later.
Avoidance arrangements Applies to taxpayers who get a benefit from a scheme entered into or carried out with the dominant purpose that they or someone else get a tax benefit	Four years	Five years* from when the business record is prepared or the transaction is completed, whichever occurs later.
Substantiation and car expenses	Two or four years, depending on your circumstances	Five years* from when the business record is prepared or the transaction is completed, whichever occurs later.
Nil liability assessments, including loss cases Applies to 2004-05 income tax assessments and beyond	Two or four years, depending on your circumstances (transitional rules apply to returns for 2003-04 and earlier years)	Five years* (for loss cases, from the end of the income year when the loss is fully deducted).
Fraud and evasion cases	Unlimited	

* This period is extended if, at the end of the five years, you are involved in a tax dispute with the Commissioner. The record retention period for some transactions, for example, capital gains tax transactions, may be longer than five years.

^ The Commissioner has determined a shorter retention period for payment summaries, Medicare levy family agreements and taxpayer declarations for returns lodged by tax agents for individual taxpayers with simple tax affairs.

**From the 2007-08 income year, the small business entities concessions replace the simplified tax system.

Broadly, you are **excluded** from the two-year period of review for a year of income if you:

- are an individual carrying on a business and you are not in the simplified tax system for that year
- are an individual carrying on a business and you are not a small business entity (income years 2007-08 onwards)
- are a recipient of partnership income (from a partnership that is carrying on a business) or trust distributions, where the partnership or trust is not in the simplified tax system, for that year (income years 2004-05 to 2006-07 inclusive)
- are a recipient of partnership income (from a partnership that is carrying on a business) or trust distributions, where the partnership or trust is not a small business entity (income years 2007-08 onwards)
- get a benefit from a scheme entered into or carried out with the dominant purpose that you (or someone else) get a tax benefit, or
- are excluded by regulation.
- If you are excluded from the standard two-year amendment period, you will have a four-year amendment period.

ATTACHMENT B: Reasons for using a Registered Tax agent or Tax Help practitioner

The following are reasons cited by SCOA members for using a registered tax agent or a Tax Help practitioner.

1. A lack of confidence to complete the tax return correctly because of the frequent changes to tax provisions and requirements due to routine changes, tax rulings etc and the legalistic language;

2. They feel that a lot of the material emanating from the Tax Office fails to meet the test of 'plain' English;

3. They have difficulty following a lot of the material in 'TaxPacks' especially that relating to capital gains tax;

4. They find the Tax Office website extremely difficult to use;

5. They have little confidence in the advice provided by the ATO helpline officers. Some have indicated that they have posed the same question to three different helpline officers and have obtained inconsistent feedback;

6. A hope that registered tax agents and Tax Help practitioners will be better equipped to handle their tax affairs;

7. The knowledge that tax agents have special portals and access to middle level Tax Officers when clarification of a requirement is needed; and

8. Because they feel it is impossible to understand capital gains tax calculations and depreciation calculations. Most registered tax agents have special computer software to deal with such calculations.

ATTACHMENT C: About SCOA

The **Superannuated Commonwealth Officers' Association (Federal Council) Inc. (SCOA)** is more than 80 years old, apolitical, not for profit and financed entirely by its members.

SCOA represents the interests of:

- Retired Australian Government employees;
- People in the public service who will receive a Commonwealth superannuation benefit (or lump sum) on retirement;
- Former employees who have deferred (preserved) their pension entitlement; and
- Spouses and or dependants of the above.

At 30 June 2007, there were 401,194 members of the CSS and PSS schemes, being

- 163,525 contributors;
- 122,481 pensioners;
- 107,844 deferred PSS and CSS beneficiaries; and
- 7,344 pensioners in the old 1922 scheme.

SCOA has a national (Federal Council) office in Canberra and separate branches in the ACT and each of the States. Its branches are staffed by volunteers. SCOA has links with Defence and State superannuant organisations and with other key organisations which represent the interests of older Australians.

SCOA's objectives are to:

- Improve and safeguard the retirement interests of its members and constituency;
- Protect the value of members' superannuation entitlements and related benefits;
- Secure fair and equitable treatment compared with other retirees and pensioners; and
- Provide information to members on issues such as superannuation, taxation, Age and other Social Security and Veterans' Affairs benefits, health and aged care, concessions, compensation, employment of older workers and general investment matters; and ensure that its members who have work related injuries or illnesses receive their correct compensation entitlements.