THE TAX BASE PTY LIMITED

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16 October 2008

Dr Ken Henry
Chairman
Australian Future Tax System
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Dr Henry

Thank you for the opportunity to make a submission to your Review Committee in relation to two particular anomalies and inconsistencies in the current tax system.

Our detailed submission is attached to this letter. In summary, our submission relates to the different tax treatments provided for:

- Self-funded retirees whose superannuation is mainly provided by an Australian employer-sponsored superannuation fund compared to an overseas employer-sponsored fund; and
- Retirees who are employed part-time in the paid work-force and retirees who are employed in volunteer services – this latter category is a major sector of the Australian population.

We would be delighted to assist you further in developing our proposals, if you consider there to be sufficient merit in the overall concepts, from an economic and social policy viewpoint. We look forward to hearing from you in due course.

Yours sincerely

Ken Traill

Ken Traill
Director

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THE REVIEW OF AUSTRALIA'S TAX SYSTEM - 2008

SUBMISSION BY THE TAX BASE PTY LIMITED
LEVEL 6, 10 HELP ST, CHATSWOOD, NSW, 2067

The Tax Base Pty Limited

The Tax Base Pty Ltd is a specialist tax consulting practice, consulting primarily to smaller accounting practices, legal practices and high net wealth individuals. The Directors of The Tax Base have both been specialising in tax consulting since the early 1970s and have a wealth of knowledge and experience in the area. The views expressed in this submission are based on our experience and knowledge gained over those many years in practice.

The author of this submission, Ken Traill, was the Principal Consultant on Tax Reform for the Institute of Chartered Accountants during the Ralph Reform of Business Taxation period and was actively involved with your Treasury Officers in consultative committees during that period.

Further details of the firm and its Directors can be found on www.thetaxbase.com.au .

Superannuation Reform for All Australians

The former Government of Australia introduced some broad-ranging superannuation tax law amendments during 2006/07, which were widely welcomed by Australians at the time for the nature of the changes and the extent of the changes. We congratulated the Government at the time for the changes that were introduced.

Since the changes were introduced, however, a number of anomalous situations have arisen in practice and this review gives us the opportunity to highlight some of the major anomalies in the hope that consideration will be given to overcome them and that changes might be introduced which will make the retirement income tax position for all Australians more consistent.

Many Australians live and work for their entire working lives in Australia. Whether they are builders, accountants, public servants, manufacturing workers or part-time employees, the new superannuation tax laws apply to them equally generously. Yet thousands of Australians migrate to Australia during their working lives or they are offered expatriate employment overseas with

their employers during part of their working lives. Others simply travel and work overseas for short periods during particularly their early working lives. This is very much the nature of the global economy these days, where employees are encouraged to work and live in several different countries during their working careers.

During periods of employment overseas, these people are usually provided with some sort of retirement benefit plans (pension fund, superannuation fund) with their overseas employers. Often such retirement benefit plans are fairly rigid in how the benefits are to be paid on retirement, such as life time pensions payable by the fund, wherever it is located and wherever the employees are located or resident when they retire. On retirement in Australia, the benefits of those foreign retirement funds flow to Australia in the form of retirement pensions or lump sums.

The Australian tax treatment of these retirement benefits is normally to treat the sums as fully or substantially assessable income in Australia. This treatment is consistent, whether the retiree is aged above or below age 60. This has to be compared with the tax treatment of retirement benefits paid by Australian superannuation funds to people aged over the age of 60 under the revised tax provisions introduced in 2006, where payments to retirees are generally tax free.

This difference in tax treatment does not appear to be explainable on economic, social or equitable grounds and, we submit, should be given due consideration by your Committee.

It is accepted there may be some overseas superannuation or retirement funds where the income has not been subject to a comparable tax regime and it is also accepted that such equivalent tax treatment of retirement incomes from such funds might not be reasonable. Yet the vast majority of such employer-sponsored funds will have been subjected to tax in the foreign jurisdiction (eg, USA, UK, Canada, New Zealand, Ireland, Germany, France). In these cases, we submit, it should be fair and reasonable for retirement incomes of Australian resident beneficiaries to be taxed in Australia in a similar manner as are incomes paid from complying Australian superannuation funds. To not do so is, we submit, discriminatory

We therefore submit our request that you recommend amendments to the tax laws relating to superannuation retirement incomes so that retirement incomes paid from foreign comparably taxed retirement funds are given similar exemption from income tax in Australia as is presently given to retirement incomes paid from Australian funds, for retirees over the age of 60.

Active Engagement in Work Force

One of the other reforms introduced by the former Government related to the ongoing deductibility of contributions to superannuation funds for people who are employed on a part-time basis. The current law requires that deductible contributions can only be made by certain people where they are gainfully employed for more than 40 hours in a year. That is, they must be employed and paid for work of more than 40 hours per year if they wish to make deductible contributions (of up to $100,000 per year) to their super funds.

Once again, this law is discriminatory and can lead to some anomalous situations in practice.

Australia has for many years relied heavily on its vast army of volunteers in a variety of endeavours, especially in charitable areas. The time put in by these volunteers is usually vastly greater than 40 hours per year, yet they get no credit for it, especially when it comes to superannuation.

Anecdotal evidence shows that numerous self-funded retirees go out of their way to find nominal employment before 30 June each year solely for the purpose of complying with the gainful employment test, in order that they can make further deductible contributions to their superannuation funds. Others are unable to find time for paid employment because of their commitment to volunteer services for charities and similar not-for-profit organisations.

It has been suggested by some that a solution to this anomaly would be for the charity to employ the volunteers for 40 hours per year and for the volunteers to donate the income back to the charity, but this compromises the charity and the volunteer. The volunteers and not looking for income from the provision of their services, but feel slighted by the fact they are unable to make deductible contributions to their super funds from other resources, such as inheritances, sales of assets, etc., even though they are more than fully engaged in providing volunteer services.

We submit that the time has come for Australia's volunteers and carers to be given due recognition for their services by permitting them to make deductible contributions to their super funds without the requirement for them to be in paid employment in that year.

Ken Traill
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