

## Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

### APPENDIX B

#### Recommendations of the Parliamentary Report

Recommendation	Implemented?
<p><b>Scale of the issue</b></p> <p><i>Recommendation 1 (paragraph 2.41)</i></p> <p>The Committee recommends that the ATO collect and maintain data as to the number and size of transfers of foreign superannuation into Australia.</p>	No evidence either way
<p><b>Character of income and tax rates</b></p> <p><i>Recommendation 2 (paragraph 3.33)</i></p> <p>The Committee recommends that when a lump sum is transferred from a nonresident non-complying superannuation fund to an Australian complying superannuation fund, the amount that is calculated under section 27CAA should be included in the Australian fund's assessable income as a taxable contribution. In this way, that amount should not be included in the assessable income of the individual resident for whom it is transferred.</p>	<p>Yes, see TLAA (2004 Measures No. 2) 2004, Sch. 9, Item 2</p> <p>Section 27CAA subsequently repealed</p>
<p><b>Character of income and tax rates</b></p> <p><i>Recommendation 3 (paragraph 3.40)</i></p> <p>The Committee recommends that the tax law be amended to average the income assessed under section 27CAA along the lines of the averaging that applied to net capital gains derived by individuals on or before 21 September 1999. That is, amend the tax law so that the total tax payable under section 27CAA would be five times the tax payable if only one fifth of the income assessable under section 27CAA were included in taxable income.</p>	No equivalent in Better Super = Not implemented
<p><b>Preservation rules</b></p> <p><i>Recommendation 4 (paragraph 3.59)</i></p> <p>If Recommendation 2 is accepted by Government, the Committee recommends that a superannuation fund be permitted to release so much of the superannuation entitlement as is needed to meet the section 27CAA tax liability when that tax is levied, similar to some superannuation contributions surcharge arrangements.</p>	No equivalent in Better Super = Not implemented

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<p><b>Preservation rules</b></p> <p><i>Recommendation 5 (paragraph 3.62)</i></p> <p>If Recommendation 2 is not accepted by Government, the Committee recommends that an individual be permitted to access so much of the superannuation entitlement as is needed to meet the section 27CAA tax liability when that tax is levied.</p>	<p>Not applicable as recommendation 2 adopted</p>
<p><b>When should any change have effect?</b></p> <p><i>Recommendation 6 (paragraph 3.74)</i></p> <p>The Committee recommends that the changes proposed by Recommendation 2 (that funds be liable for the tax on transfers), Recommendation 3 (that the tax on individuals be averaged), and Recommendations 4 and 5 (relaxation of the preservation rules) apply prospectively, from the date of commencement of any legislative change.</p>	<p>Recommendation 2 applied from 1/7/2004</p>
<p><b>Double taxation</b></p> <p><i>Recommendation 7 (paragraph 3.83)</i></p> <p>The Committee recommends that, to prevent double taxation, section 23AK of the ITAA 1936 be amended to allow for the exemption of amounts referred to under paragraph 603(1)(h) paid 'in relation to a taxpayer' rather than 'to a taxpayer'.</p>	<p>Implemented by Act number 66 of 2003</p>
<p><b>Double taxation</b></p> <p><i>Recommendation 8 (paragraph 3.85)</i></p> <p>The Committee recommends that as an interim measure, the Commissioner of Taxation issue a ruling or determination to clarify that a liability for tax under section 27CAA will be reduced by any tax raised under the Foreign Investment Fund (FIF) regime and so double taxation will not be imposed.</p>	<p>Yes, see <a href="#">TR 2003/12</a> (withdrawn effective 22/2/2006)</p>
<p><b>Addressing the causes of delay</b></p> <p><i>Recommendation 9 (paragraph 4.15)</i></p> <p>The Committee recommends that APRA, the ATO and the Treasury (in consultation with the superannuation industry) develop with their foreign counterparts bilateral protocols for the transfer of superannuation between the countries. In particular, priority should be given to developing a protocol with the UK.</p>	<p>Most (including UK)</p>
<p><b>Length of exemption period</b></p> <p><i>Recommendation 10 (paragraph 4.22)</i></p>	<p>No</p>

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<p>The Committee recommends that the period in which the payment of a lump sum from a foreign superannuation fund is exempt from tax under section 27CAA be extended from six months to two years.</p>	
<p><b><i>Flexibility of the exemption period</i></b></p> <p><i>Recommendation 11 (paragraph 4.28)</i></p> <p>The Committee recommends that the law be amended to give the Commissioner of Taxation the discretion to further extend the period for a tax-free transfer in instances where the member has taken reasonable steps to have the benefits transferred and has suffered undue delays which were beyond their control.</p>	<p>No</p>
<p><b><i>The 'relevant day'</i></b></p> <p><i>Recommendation 12 (paragraph 4.51)</i></p> <p>The Committee recommends that section 27CAA be amended to ensure that where an individual becomes an Australian resident, then becomes a nonresident before becoming a resident once more, the growth since an individual first became a resident is apportioned according to the periods of residence and non-residence that occur after that time. That is, tax should only apply to that growth in the lump sum which is attributable to a period of residence in Australia.</p>	<p>Yes, see TLAA (2004 Measures No. 2) 2004, Sch. 9, Item 2</p>
<p><b><i>The 'relevant day'</i></b></p> <p><i>Recommendation 13 (paragraph 4.61)</i></p> <p>The Committee recommends that the definition of the 'relevant day' in section 27CAA be amended prospectively so that, for lump sums paid after the date of commencement of any legislative change, only growth since the later of 1 July 1994 and the date an individual became a resident is subject to tax.</p>	
<p><b><i>The 'properly payable' amount</i></b></p> <p><i>Recommendation 14 (paragraph 4.72)</i></p> <p>The Committee recommends that the Commissioner of Taxation issue a public ruling that sets out the Australian Taxation Office's interpretation of the meaning of 'properly payable'. In particular, that ruling should address the situation where a foreign fund from which an amount is transferred refuses to give information about the value of the accumulated entitlement.</p>	<p>Short definition was contained in TR 2003/12</p>
<p><b><i>The 'properly payable' amount</i></b></p> <p><i>Recommendation 15 (paragraph 4.84)</i></p> <p>The Committee recommends that, where a lump sum is paid from a foreign defined benefit scheme and the amount which is properly payable cannot be</p>	<p>Not implemented</p>

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determined, the Government examine the feasibility of apportioning the total growth in the scheme over periods of residence and non-residence of a member, so that a member is only taxed on that growth that is attributable to a period of residence.	
<p><b>Improving awareness</b></p> <p><i>Recommendation 16 (paragraph 5.14)</i></p> <p>The Committee recommends that permanent visa applications:</p> <ul style="list-style-type: none"><li>◆ require applicants to disclose the foreign superannuation entitlements they hold; and</li><li>◆ advise applicants (in some general way) of the taxation treatment applying to their foreign superannuation entitlements.</li></ul>	Not implemented
<p><b>Improving awareness</b></p> <p><i>Recommendation 17 (paragraph 5.24)</i></p> <p>The Committee recommends that the TaxPack be redrafted to give more complete and accurate guidance on the circumstances in which a liability may arise under section 27CAA. In particular, question 19 of the TaxPack Supplement should note that it applies to both direct payments and transfers of foreign superannuation.</p>	
<p><b>Improving awareness</b></p> <p><i>Recommendation 18 (paragraph 5.29)</i></p> <p>The Committee recommends that the Commissioner of Taxation issue a public ruling or determination to clarify that tax will not be imposed twice under section 27CAA when a foreign superannuation entitlement is transferred from one foreign fund to another and is subsequently transferred to Australia.</p>	See TR 2003/12 (now withdrawn)

See Taxation Laws Amendment (2004 Measures No. 2) Act 2004:

- ◆ [Act](#)
- ◆ [EM](#)