

RICHARD A BOBB SEEKS STREAMLINED SUPERANNUATION ARRANGEMENTS

Richard A Bobb partner, Mr David Woo, has challenged the policy arrangements behind deductibility for superannuation contributions for “eligible persons”.

In a timely contribution to the debate on superannuation, given the draft tax ruling issued by the Australian Taxation Office on the deductibility of personal superannuation contributions¹, Woo says a re-jigging of the way in which self-employed persons and other eligible persons (who are not otherwise provided with superannuation support) can claim deductions should now be undertaken.

Under the current provisions a taxpayer is entitled to a deduction for personal superannuation contributions under Section 82AAT of the *Income Tax Assessment Act, 1936* if four (4) conditions are met.

The conditions are:

- the taxpayer is an “eligible person”² in relation to the year of income;
- the taxpayer made the contributions in order to obtain superannuation benefits;
- the fund receiving contributions is a complying superannuation fund; and
- the taxpayer has given notice under sub-section 82AAT(1A) in respect of the contribution and the trustee of the fund has acknowledged that notice, also under sub-section 82AAT(1A).

¹ The draft ruling was issued on 25th May 2005 and calls for submissions to be made on or before 6th July 2005.

² This term is defined in sub-section 82AAS(2) to mean a person who does not receive superannuation fund support in connection with eligible employment and if that person does then his eligible employment income is less than 10% of his total assessable income and reportable fringe benefits for a year of income.

Mr Woo has challenged the need for red tape by having a taxpayer issue a Section 82AAT notice and for the superannuation fund trustee to acknowledge receipt. He has further challenged the idea that deductibility for personal contributions should be adversely impacted if employment income thresholds are breached. Therefore, by eliminating these two (2) conditions in Section 82AAT Woo has opined that, from a policy perspective, the only issue should be to determine a statutory limit based on age, rather than on the notion of whether or not a taxpayer is an “eligible person” and whether notices are served and received.

The changing nature of employment, arising from new globalisation trends, is likely to mean that the old rules for determining who is, and who is not an employee will become more and more difficult. Therefore, in the opinion of Mr Woo, it will be preferable to go back to the drawing board and re-draft Section 82AAT.

For the benefit of the Commonwealth Parliamentary Draftsman *Richard A Bobb* provides the following simple rule for permitting deductions in respect of personal superannuation contributions:

1. The 75% rule which applies in respect of the excess contributions made over \$5,000 in year of income should be abolished. This levels the playing field and neither distorts nor complicates the entitlement for deductions to be claimed for superannuation, especially at a time when Australia’s population is ageing.
2. Eliminate the ‘eligible person’ test and allow a deduction provided the total amount contributed by any person during a

year of income, from all sources, shall not exceed the person's aged based limit, as set out in sub-section 82AAC(2A), in which case a person who has made a contribution fund during a year of income is entitled to an allowable deduction for the contribution in the person's assessment for the year of income if all the following two (2) conditions are met:

- (a) the person made the contribution in order to obtain superannuation benefits for the person or for dependants of the person in the event of the person's death; and
- (b) the fund is a complying superannuation fund for the fund" year of income in which the person made the contribution;

The simplified version of the rules, set out above, would greatly reduce the red tape, unnecessary administration and minimise the cost of tax compliance.

3. *Richard A Bobb* also suggests that the limit on deductibility under Section 26-55 set out in the *Income Tax Assessment Act, 1997* should be removed. This section states that there is a limit on the total amounts that can be deducted in the year of income (including, presently, deductions for superannuation contributions by eligible persons under Section 82AAT). The limit is worked out by subtracting from a taxpayer's assessable income all deductions (except tax losses). The effect of the Section 26-55 limitation is to, in effect, deny a

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Deduction under Section 82AAT (and some other provisions) from giving rise to a current year tax loss which can be carried forward into a subsequent year of income. Woo says this is an unfair, an antiquated and unnecessary provision which again unfortunately complicates tax law.