

## The Henry Tax Review – Superannuation aspects

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The guessing is over – we now know what a ‘root and branch’ tax review looks like. We were also reminded that, in an election year, caution can be a very attractive option for a government.

The government released yesterday the three-volume final report of the Henry Review of Australia’s Future Tax System (Report). As expected, the Report is far-reaching, intended to shape Australia’s tax system for the first half of the 21st century. It contains 138 specific recommendations covering a broad spectrum of tax and related areas, supported by extensive analysis of relevant issues, including estimates of likely economic impacts.

The government’s reaction to the Report, released at the same time, is less voluminous and less ambitious, proposing a staged and very selective response to the Report; and the committed changes will have deferred starts.

In this article, we examine superannuation aspects of the Report.

### First stage government responses on superannuation and retirement savings

#### Gradual increase in the superannuation guarantee contribution rate from 9% to 12%

The superannuation guarantee (SG) contribution rate will be gradually increased from 9% to 12%, starting 1 July 2013 with a 0.25% increase. The indicative timeline to increase the rate is as follows:

Year	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Rate (%)	9.25	9.5	10	10.5	11	11.5	12

Many of the submissions to the Henry retirement income review had suggested that an increase to 12% was necessary to achieve adequate retirement savings, particularly for lower income earners.

#### 15% contributions tax

There is not presently a government proposal to increase the 15% tax on concessional superannuation contributions, but equally an increase has not been ruled out and the Henry Report is open to that prospect.

#### Increase in the superannuation guarantee age limit from 70 to 75

The current cessation of mandatory superannuation guarantee contributions at age 70 will be deferred until 75. The indicative start date is 1 July 2013. The change is intended to encourage mature workers to remain in the workforce.

#### Low income earners government contribution

For individuals with ‘adjusted taxable income’ of up to \$37,000, the government will make a contribution of 15 cents for every \$1 of concessional contributions made, capped at a total government contribution of \$500 (unindexed). This is intended to have the effect of eliminating the 15% contributions tax paid by the superannuation fund on contributions from low income earners.

The measure is intended to apply to concessional contributions made from 2012-13, with the first government contributions paid in 2013-14.

Concessional contributions include both employer contributions and deducted contributions made by individuals who meet the ‘self-employed’ test.

An employee earning salary of \$37,000 would receive sufficient mandatory superannuation guarantee contributions at 9%

to qualify for the whole \$500 government contribution without having to sacrifice any cash salary.

The existing government co-contribution paid on non-concessional contributions (generally after-tax contributions), which for the 2012-13 year is scheduled to be \$1.25 per \$1, will often remain more attractive for low income employees than sacrificing additional salary into superannuation in order to access the new proposed government contribution.

Other details of the proposal will be developed in consultation with the superannuation industry. At this stage we would not expect the proposed government contribution to be taxed as a concessional contribution. Issues that will need to be addressed include whether the proposed government contribution will count towards the non-concessional contributions limit and whether it will affect the existing government co-contribution. In addition, using 'adjusted taxable income', which is an existing concept in the tax legislation, as the income test will be out of step with the standardised income test applied for other government benefits.

For higher income earners with 'adjusted taxable income' in excess of \$37,000 the retention of the 15% tax on concessional contributions without a rebate is seen by the government as being a sufficient concession, considering their marginal tax rates. Their marginal rate will generally be at least 30% plus Medicare Levy – from 1 July 2010, this rate commences at taxable income of \$37,000.

### **\$50,000 concessional contributions cap**

Current transitional arrangements provide a more generous \$50,000 concessional contributions cap for individuals aged 50 or over. This higher cap was due to expire on 30 June 2012. The government has announced that the \$50,000 contributions cap will apply on a permanent basis for individuals aged 50 or over, but only for those with total superannuation balances of less than \$500,000. This proposal is intended to come into effect from 1 July 2012. It will assist those individuals approaching retirement age who are in greatest need to build their superannuation savings.

### **Tax free status of end benefits after age 60 reaffirmed**

The government has reaffirmed that it will not be removing the tax free status of superannuation benefits paid to persons aged 60 or over.

## **A further stage?**

There is a short list of recommendations in the Henry Report that the government has accepted, even tentatively. The rest of the Report is consigned to an uncertain future. The government, not wishing to give it credence, says simply that 'other recommendations in the review are not government policy.' Yet there is much in the Report that deserves a better fate, and there are a number of recommendations which future governments might consider adopting. The superannuation-related proposals are as follows:

### **Tax on superannuation contributions**

The Report recommends that the tax on superannuation contributions at the fund level be abolished. Rather, it recommends that employer contributions be treated as income in the hands of the individual and taxed at the employee's marginal rate, with a flat rate refundable tax offset. The offset would be provided on contributions up to an annual cap (indexed) of \$25,000. The rate of rebate would be set so that most taxpayers (those on a marginal tax rate of not more than the Report's recommended 'standard rate' of 35%) would not pay more than 15% tax on their contributions. The Report at least leaves open the prospect of higher contributions tax for top marginal rate taxpayers.

One can envisage a range of issues associated with this measure, not the least of which would be liquidity concerns and member funding of defined benefit arrangements.

### **Complying superannuation fund tax rate**

The Report also recommends a reduction in the complying fund tax rate from 15% to 7.5%, a recommendation which one suspects would find universal approval. However, there is a sting in the tail – a recommendation for the removal of the pension exemption at fund level.

### **Encourage the development of the longevity insurance market**

A further recommendation in the Report is that the government support the development of a longevity insurance market by the introduction of three key measures:

1. government-issued long term securities
2. the issuance of data needed to create and maintain a longevity index
3. relaxing the prescriptive superannuation legislation to foster product innovation in this regard.

## What next?

Ken Henry always conceived of this project as designed to generate a long-term vision for Australia's future tax system. Judged against this goal, the government's decision to address directly only a handful of the 138 recommendations indicates little about the Report's ultimate significance.

There is much in the Report that may return, for good and ill, in the next few decades. To put it more positively, business may find it very worthwhile to trawl through the three volumes to find the good ideas it contains that should not be allowed to languish just because they are unappealing to the government at the moment.

**This article was adapted, with permission, from a Tax Brief prepared by Greenwoods & Freehills Pty Limited.<sup>1</sup>**

## Endnotes

1. Greenwoods & Freehills Tax Brief, 3 May 2010.

## More information

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