

Association of Superannuation Funds of PNG Inc.
P O Box 5791
BOROKO
National Capital District

Attention: Chris Hagan

11 October 2004

Our Ref: Admin\PB:AB:lnib

Dear Sir

Re: PROPOSED CHANGES TO THE SUPERANNUATION ACT

We refer to the email dated 23 September 2004 from Rod Mitchell requesting for our comments on the proposed amendments to the provisions of the Superannuation Act.

Our comments are as follows:

Issue No 1

Eligible age

We agree with the proposal for removing the existing inconsistency between the Income Tax Act and the Superannuation Act in regards to the distribution of employer contribution at concessional rate of tax.

The purpose of the superannuation is to assist people to provide for themselves after they retire from work and preventing them accessing the superannuation benefits until after the average age of mortality in PNG is not the intention of the legislation. There is no doubt that inconsistencies in the legislation must be removed to facilitate contributors access to benefits at the time when needed.

The Papua New Guinea Income Tax Legislation allows for concessional tax rates on withdrawals of employer contributions to approved superannuation funds provided certain conditions are fulfilled.

The Income Tax (Salary or Wages Tax) (Rates) Act 1979 as amended sets out the conditions and the concessional rates of tax when contributors withdraw employer contributions.

Under the legislation the tax rate diminishes with the increasing number of years of contribution to an approved superannuation fund as is set out in the table below.

Years Contributions	of	Less than five years	Not less than 5 years and not greater than 9 years	Not less than 9 years and not greater than 15 years
Rate of Tax		Rate of tax prescribed by Subsection 1 (1) (i.e. the individuals marginal rate of tax)	The lesser of 15% or rate of tax as prescribed by Subsection 1 (1)	The lesser of 8% or rate of tax as prescribed by Subsection 1 (1)

The above concessional rates of tax are applied without any restrictions on the contributor's age or employment conditions.

In addition to the above, a further concessional rate of tax of 2% applies to distributions not greater than the "prescribed sum" where the payment is made from:

1. from superannuation benefits accrued prior to 1 January 1993; or
2. in respect of contributions made on behalf of the employee, for not less than 15 years; or
3. in respect of contributions made on behalf of the employee, for not less than 7 years, where the employee is more than 50 years of age; or
4. in respect of contributions made on behalf of the employee, where the employee is subject to enforced early retirement; or made as a result of the death or permanent disability of the employee.

The 2% rate of tax applies where contributors fulfil any of the above conditions, which are independent of each other.

Prior to the amendment made to the Income Tax Act in 2004 ("Act"), the 2% rate of income tax was the only concession available to the long-term contributors to an approved superannuation fund. The amendments made to the Act in 2004 aimed to provide impetus on savings to short to medium term contributors without restricting the benefit by imposing age or employment restrictions.

Contributors attaining the age of 50 years but not contributing for at least seven years would not be able to avail themselves of the 2% tax rate and instead be taxed at 15% or marginal rates. Any extension of the age limit beyond 50 years will deprive contributors of the existing benefit of the concessional rate and significantly reduce amounts already provided by taxpayers to finance their retirement. This concessional rate is a major element of retirement planning and in our view it would not be appropriate to propose an amendment to the Income Tax Act to extend the age limit to 55 years in line with the Superannuation Act.

Under the Superannuation Act 2000, members' withdrawal of benefits is restricted. Members can withdraw benefits:

- ⇒ On ceasing employment after reaching 55 years;
- ⇒ Where permanent or total incapacity occurs;
- ⇒ On permanently migrating from PNG;
- ⇒ On termination of employment where the member is able to demonstrate to the satisfaction of the trustee a period of twelve month of continuous unemployment.
- ⇒ One year of departure from PNG if not citizen;
- ⇒ Housing loan (after no less than five years membership);
- ⇒ For the payment of life insurance premium but only to the extent of voluntary contributions made.

The provisions of the Superannuation Act prohibit the withdrawal of funds under normal circumstances unless a contributor has reached 55 years of age. This restrictive provision contradicts the provision of the Income Tax Act where the 2% tax rate is available on reaching the age of 50 years and contributing to an approved superannuation fund for at least seven years.

On the above basis, we believe that the anomaly in the two Acts should be removed and it may be proposed that the eligible age for members to withdraw the benefits may be amended to 50 years in the Superannuation Act 2000.

While we concur with the views of the Association of Superannuation of PNG Inc., on the proposed amendment, we at the same time would take this opportunity to highlight the downsides that may arise in this regard:

- ⇒ Contributors may elect for early termination or retirement to take advantage of the concessional tax rates, negating the purpose of the Acts, which is intended to promote savings.
- ⇒ Socio economic impact of early retirement.
- ⇒ Impact on business of losing skilled employees.

It may be argued however that opportunities for replacement staff to enter the workforce and the reasonable expectation of members to live long enough to enjoy the benefits of their “life long” savings outweigh such concerns.

Issue No 2

Technical anomalies in the Income Tax Act

We agree that the wordings of Section 46B (1) of the Income Tax Act should be amended to include partial distribution of benefits in accordance with the Superannuation Act and the provision of Section 46 B (4) may be reworded to conform to the rate of tax applicable as per the provisions of the Income Tax Act (Salary or Wages Tax) (Rates) Act 1979 as amended.

We are of the view that the reference to “lump sum” in Section 46B(1) of the Income Tax Act is made in the context of the distribution of the prescribed sum as per Reg 5F. Distribution of prescribed benefit, which is no greater than the prescribed sum whether partial, or in full is to be taxed at the rates prescribed in the Income Tax Act (Salary or Wages Tax) (Rates) Act 1979 as amended or at concessional rates. We note that the twelve-month holding period as per the Superannuation Act is not a tax provision and does not impact on the withdrawal of prescribed benefits for tax purposes. However, we agree that the tax legislation needs to be clarified.

Should you need any assistance or further advice in regards to your proposal please contact Arun Basu, Manager or Lutz Heim, Partner at 308 7000.

Yours sincerely

DELOITTE TOUCE TOHMATSU



PAUL BARBER
Managing Partner