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The Manager
Company Tax Unit
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: companytax@treasury.gov.au

Dear Sir/Madam

Life Insurance Companies: Exempt Life Insurance Policies

The Taxation Institute of Australia (**Taxation Institute**) welcomes the opportunity to provide comments on the Life Insurance Companies: Exempt Life Insurance Policies discussion paper (**the Paper**)

As reflected in the comments below, the Taxation Institute broadly supports the proposed changes outlined in the Paper. However, the Taxation Institute recommends certain modifications to the approach suggested in the Paper. These recommendations are outlined below. In particular, the Taxation Institute recommends that the amendments apply retrospectively, with effect from 1 July 2000, instead of from 1 July 2002 as proposed in the Paper.

Immediate annuities

The Taxation Institute agrees with the Paper's assertion that the existing law in Division 320 of the *Income Tax Assessment Act 1997* (**the ITAA 1997**) is deficient in effecting the intention of treating life insurance policies that provide immediate annuities as tax-exempt to life insurance companies.

In particular, the Taxation Institute agrees that, in applying the approved annuity conditions to life insurance policies providing immediate annuities, the former Division 8 of Part III of the *Income Tax Assessment Act 1936* (**the ITAA 1936**) – particularly the definition of “exempt policy” in subsection 110(1) – was consistent with the intention of treating income from assets supporting life insurance policies that provide for immediate annuities as tax-exempt to life insurance companies but taxable to policy holders.

The Taxation Institute notes that the explanatory memorandum to the *New Business Tax System (Miscellaneous) Act (No.2) 2000* (which introduced the current Division 320 of the ITAA 1997) stated a clear intention for Division 320 to replicate the provisions of Division 8 of Part III of the ITAA 1936. In this regard, the Taxation Institute agrees with the Paper's assertion that the simplification implemented by the amending Act was not effective in replicating the approved annuity conditions of the subsection 110(1) definition of “exempt policy” in the current law.

In particular, the current subsections 320-246(1)(e), 320-246(3), 320-246(4)(a), 320-246(4)(b) and 320-246(5) of the ITAA 1997 apply to a narrower range of policies than is understood to have applied under the former Division 8.

Superannuation income streams

The Taxation Institute agrees with the Paper's proposal to align Division 320 with the Simpler Superannuation reforms in relation to immediate annuities that are superannuation income streams. In particular, the Taxation Institute agrees that income from assets supporting immediate annuities that are superannuation income streams should be considered tax-exempt to life insurance companies, without being required to satisfy the approved annuity conditions.

Amendments proposed by the Paper

The Taxation Institute generally agrees with the modifications to subsections 320-246(3), 320-246(4)(a) and 320-246(4)(b) suggested in the Paper. However, the Taxation Institute recommends the amendments to apply retrospectively, with effect from 1 July 2000, instead of from 1 July 2002 as proposed in the Paper. The Taxation Institute also agrees that the current wording of subsection 320-246(5) is sufficient, and does not require amendment.

However, the Taxation Institute considers that the operation of paragraphs 320-246(1)(e)(ii), (iii) and (iv) in requiring the satisfaction of the conditions in subsections 320-246(3), (4) and (5) requires improvement, and recommends that the current legislation be rewritten with direct reference to satisfying the "approved annuity conditions". The Taxation Institute also recommends that subsections 320-246(3), (4) and (5) be rewritten to reflect these "approved annuity conditions" in a simple tabular form as outlined in paragraph 9 of the Paper.

The Taxation Institute agrees with the amendments to subsections 320-246(1) and 320-246(4) suggested by the Paper, as well as the amendments to subsections 320-246(3) and (4) suggested in the Paper, as a consequence of the amendments to subdivision AA of division 2 of the ITAA 1936 made by the *Superannuation Legislation Amendment (Simplification) Act 2007*.

Other amendments – deferred annuities

The Taxation Institute understands that the Federal Treasury has been made aware of apparent deficiencies in the operation of the superannuation legislation and its interaction with the taxation law, especially in relation to the treatment of deferred annuities issued by life insurance companies. In making the amendments proposed in the Paper, the Taxation Institute recommends the Federal Treasury take this opportunity to review the gaps in the legislation in relation to this issue. In this regard, the Taxation Institute would be happy to provide additional input and submissions as to the issue should Treasury require.

If you require any further information or assistance in respect of our submission, please contact the Taxation Institute's Senior Tax Counsel, Dr Michael Dirkis, on 02 8223 0011.

Yours sincerely



Joan Roberts
President