SENATOR
THE HON. ROD KEMP

ASSISTANT TREASURER

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PRESS RELEASE

NO. 46

TAX CHANGES TO ENCOURAGE THE USE OF STRUCTURED SETTLEMENTS FOR PERSONAL INJURY COMPENSATION

The Assistant Treasurer, Senator Rod Kemp, today announced that the Government will introduce legislative amendments designed to encourage the use of structured settlements for personal injury compensation.

These arrangements have been developed in consultation with the Structured Settlements Group, which represents a broad range of interested organisations. I am very pleased that we have been able to work so constructively with the SSG to produce an outcome that will benefit some of the most needy in our community.

Structured settlements involve compensation for personal injury where part of the compensation is paid in the form of a lifelong series of periodic payments. A major advantage of a structured settlement over a lump sum compensation payment is that many people are unable to properly manage the investment of their lump sum. This can result in the early dissipation of compensation payments, leaving people in a position where they are not able to meet the on-going medical and other costs associated with their injury.

The amendments will ensure that gravely injured people who are eligible to receive large tax-free lump sum compensation payments can negotiate to receive all or part of their compensation in the form of a tax-free annuity or annuities. Currently, if an annuity were purchased out of a lump sum tax free payment, it would be taxable to the extent that the annuity payments include a component related to the investment earnings on the underlying lump sum.

The amendments are targeted at seriously injured people who will be reliant on their compensation settlement for the rest of their lives. Consistent with this aim, tax-free annuities will be required to provide a minimum level of income support over the annuitant’s life.

The changes are also primarily intended to benefit seriously injured people who may not otherwise have access to periodic compensation payments. Accordingly, compensation settlements arising from claims against an employer will be ineligible for the concession.

The measures will protect the security of an injured person's tax free income stream by ensuring that tax exempt annuities are paid from a prudentially regulated source and that the annuities will not be commutable or assignable to another party.

These and other eligibility conditions for accessing the exemption are outlined in the Attachment to this press release.

The Government intends to monitor the effectiveness of the tax exemption. A statutory review to assess the effectiveness of the measures will be undertaken no later than five years from their introduction.

The changes announced in this press release will have effect from today.

CANBERRA

26 September 2001

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Attachment

Eligibility conditions for tax exemption for structured settlement annuities

Under the changes announced by the Assistant Treasurer in this press release, an income tax exemption will be available for annuities or groups of annuities which meet the following conditions:

- each annuity must be provided as compensation or damages for an injury or illness (physical or mental) that the annuitant suffers personally and arises out of a wrong or statutory liability;
- the compensation or damages must not arise in relation to an action against the annuitant's employer;
- had the annuitant received the compensation in the form of a lump sum, the lump sum would have been tax-free in the annuitant's hands;
- each annuity must be purchased by the defendant, or their insurer, for the benefit of the annuitant from an institution authorised to provide life-based annuity products;
- the annuity or group of annuities must together provide a minimum level of income over the annuitant's life which, in any year, is the equivalent of the Age Pension at the commencement of the annuity, indexed for subsequent growth in the Consumer Price Index;
- each annuity provides payments to the annuitant at least monthly, and is not market linked;
- any agreement between the provider of an annuity and the annuitant to commute any annuity would have no legal effect;
- any agreement between an annuitant and any other legal person to assign a right to receive a payment under any annuity would have no legal effect; and
- the annuity may not have a residual value apart from that provided by a guarantee period (of a maximum of 10 years) in the event of the death of the annuitant.