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24 August 2012

The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: CGT_Super_Roll-over@treasury.gov.au

Dear General Manager,

TAXATION RELIEF FOR MERGING SUPERANNUATION FUNDS

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission with respect to the Exposure Draft legislation *Tax laws Amendment (2012 measures NO.5) Bill 2012: Merging superannuation funds* and explanatory statement.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General comments

ASFA is pleased that the Government has recognised the importance of providing comprehensive CGT rollover relief to merging superannuation entities and notes the significant changes from both the April 2012 announcement and the May 2012 Proposals Paper.

Specifically, we:

- Welcome the backdating of relief to 1 October 2011 as this will provide continuity of relief coverage and remove the possibility that members of superannuation funds who merged between 1 October 2011 and 31 May 2012 may have suffered a diminution in their benefits due to the unavailability of CGT loss rollover relief.
- Note and welcome the removal of the 'integrity' provision.
- Welcome the extension of the earlier temporary relief to capital gains in all circumstances (not just where a fund's net position is an unrealised loss).

We recommend introduction of the Bill into Parliament at the earliest opportunity.

We note that the Exposure Draft does not deal with the second part of the 24 April 2012 announcements, that is, the relief to facilitate the mandatory requirements to transfer members and assets to a fund that offers a MySuper product.

Related to that issue, a key component of the MySuper proposals is the mandatory transfer of existing default account balances into the MySuper investment strategy by 2017. For a large number of superannuation funds, compliance with this component of the MySuper rules will require the internal transfer of members' money between investment products. Where the underlying investments are held in a PST, and the MySuper investment strategy is not held through the same PST, it would appear that there is no relief proposed. That is, there will be no capacity for the member's share of a PST's real or notional loss to be transferred to the vehicle that holds the MySuper investment option.

ASFA considers that, as the transfer requirement will be mandated, the law should be amended to facilitate the transfer of any loss so as to not disadvantage the member.

Whilst the actual transfer can be delayed until 30 June 2017, decisions about when, in the best interests of members, such transfers should be made, are currently being considered as trustees design their MySuper products. The absence of detail on the design of the tax provisions in relation to inter fund transfers and the lack of acknowledgment of the intra-fund transfer issue is complicating the product design task.

ASFA would appreciate an early indication of when the consultation process on this part of the April 2012 announcement will commence and confirmation that the consultation will also address the intra-fund transfer of investments issue.

Related successor fund transfer issues

As noted in our submission of 8 June 2012 in response to the proposals paper, the proposed MySuper reforms and the compulsory transfer of members through fund mergers may adversely impact on members in a number of ways. The Exposure Draft addresses only the issue of the wastage of capital and revenue losses that may arise in these circumstances, whereas tax can give rise to disadvantages to members in merger situations in a number of other ways. ASFA considers that to minimise the impact on members, the following additional matters should be considered and dealt with in finalising the legislation:

- Exclusion of such transfers from the "qualified person" requirements/ 45 day holding period rule for franking credits (In the absence of this measure, funds and ultimately members may lose tax benefits associated with such credits)
- Permitting access to the ongoing fund for No-TFN contribution offsets in relation to No-TFN contributions tax paid by the closing fund (Section 295-675 of the *Income Tax Assessment Act 1997*) (In the absence of this measure, members who had not provided their TFNs to the closing fund will be permanently disadvantaged as they are unable to seek refund of any No-TFN contributions tax paid during their membership in their former fund)

- Permitting access to the ongoing fund for blackhole expenditure deductions not yet claimed by the closing fund (In the absence of this measure, members will bear the effective cost of the non-deductibility of merger-related costs incurred by the closing fund)
- Addressing the impact of Stamp duty on asset transfers (In the absence of this measure, members will bear the effective cost of these duties, that would not occur but for the merger. Clearly relief in relation to stamp duty would require agreement between the Commonwealth and the State and Territory Governments, as any relief would need to be addressed in State and Territory legislation)

ASFA again requests consideration of these issues.

Finally, we note that there is still an absence of relief for a self-managed superannuation fund (SMSF) merging with an APRA regulated fund. Whilst recognising that SMSFs are not subject to the MySuper measures, ASFA considered that there are sound policy reasons for removing a barrier to an SMSF being wound up where the current arrangement has become inefficient or where the trustee is no longer able to properly perform their duties.

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If you have any queries or comments regarding the contents of our submission, please contact our principal policy adviser, Robert Hodge on (02) 8079 0806 or via e-mail to rhodge@superannuation.asn.au.

Yours sincerely
Margaret Stewart



General Manager, Policy and Industry Practice