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10 February 2017

The Treasury

Superannuation Tax Reform

Retirement Income Policy Division

via electronic lodgement: <https://consult.treasury.gov.au/retirement-income-policy-division/superannuation-reform-package-regulations/consultation/intro/>

Dear Sir \ Madam,

Re: Consultation on the exposure drafts of the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017*

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission in response to the consultation on the exposure drafts of the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017* (Exposure Draft Regulations).

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system so people can live in retirement with increasing prosperity. We focus on the issues that affect the entire Australian superannuation system. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through our service provider membership, represents over 90 per cent of the 14.8 million Australians with superannuation.

Potential issue - \$1.6 million Transfer Balance Cap – Rollovers from untaxed schemes

A question has arisen with respect to how the \$1.6 million transfer balance cap will be calculated with respect to rollovers from untaxed schemes.

Members of untaxed schemes can have large untaxed elements in any rollover into a taxed scheme, including a rollover to commence a taxed allocated pension. Once there, the receiving (taxed) fund will apply the 15% tax on the untaxed element of the rollover.

The question has arisen as to whether the \$1.6 million transfer balance cap will be calculated based on the 'before tax' or 'after tax' amount of the roll over received by a taxed superannuation fund.

Section '294-25 Transfer balance credits' of the *Treasury Laws Amendments (Fair and Sustainable Superannuation) Bill 2016* (Bill) states that a credit in the transfer balance account of a member will arise if:

'on a day (the **starting day**) on or after 1 July 2017 [they] start to be the *retirement phase recipient of a *superannuation income stream' where the amount of the credit is 'the *value on the starting day of the *superannuation interest that supports the superannuation income stream'.

It is unclear whether credits to a member's transfer balance account would be calculated based on the gross or net amount of any roll over received by a taxed fund providing an allocated pension.

The definition of value, with respect to a superannuation interest, has the meaning given by section 307 – 205(1) of the *Income Tax Assessment Act 1997* (ITAA). Section 307 – 205(1) states as follows: -

'(1) The value of a *superannuation interest at a particular time is:

(a) if the regulations specify a method for determining the value of the superannuation interest—that value; or

(b) otherwise—the total amount of all the *superannuation lump sums that could be payable from the interest at that time”.

The meaning of superannuation interest may be affected by regulations made for the purposes of section 307-200 of the ITAA. Historically – prior to the introduction of these measures - there have been regulations made for the purposes of section 307-200 and 307-205 to, amongst other things: -

- provide for the application of subdivision 307-D to subdivisions 291-C and 293-D
- provide that every amount, benefit or entitlement that a member holds in an SMSFs to be treated as 1 superannuation interest unless the amount, benefit or entitlement is to be treated as 2 or more superannuation interests in accordance with the regulations
- treat a superannuation interest as 2 or more superannuation interests (public sector schemes)
- treat a superannuation interest as 2 or more superannuation interests (superannuation income streams)
- determine the value of superannuation interest for calculating pre-July 1983 amount for members in the contributions and investment phase
- specify a method for determining the value of a superannuation interest at a particular time if the interest supports a superannuation income stream in certain circumstances
- specify the value of a superannuation income stream or superannuation annuity based on identifiable amounts; and
- specify the value of an interest in a public sector superannuation scheme.

The Exposure Draft Regulations do not appear to be making any new regulations, for the purpose of either section 307-200 or 307-205 of the ITAA, in the context of determining the value of the superannuation interest for the purposes of quantifying the amount credited to a member's transfer balance account.

Given this, this leaves only the definitions in the Bill and the ITAA to aid the interpretation and application of this provision to rollovers from untaxed schemes.

Importantly, the amount which is credited to a member's transfer balance account is the value of the 'superannuation interest ***that supports the superannuation income stream***' (emphasis added). It is arguable that this is the net amount, not the gross. This would also be consistent with the concept of the value of the *superannuation lump sums that could be payable from the interest at that time* - the time the allocated pension commences.

Further, it could be considered that a taxed scheme, upon receiving a rollover from an untaxed scheme, would have created an account and deducted the tax prior to commencing the allocated pension. Accordingly, the scheme would not be considered to have transferred the (net) amount into the retirement phase until such time as it commenced the payment of the allocated pension, which at that time would give rise to the crediting, in the member's transfer balance account, of the net amount.

If this interpretation is correct then there is no need for anything to be done, although confirmation from the Australian Taxation Office to the effect that this is the correct interpretation would be appreciated.

If, however, this is not the correct interpretation we submit that the Exposure Draft Regulations should be amended to provide that the meaning of superannuation interest for this purpose is the ***net*** amount of any roll over received from an untaxed scheme.

We would like to thank you for the opportunity to provide comments on the Exposure Draft Regulations and would welcome the opportunity to discuss with Treasury the matters raised in this submission.

Should you have any questions on any of the matters raised in this submission please do not hesitate to contact Fiona Galbraith, Director Policy, on +61(0)3 9225 4021 or +61(0)431 490 240 or via fgalbraith@superannuation.asn.au.

Yours faithfully

Fiona Galbraith
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