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General Manager
Benefits and Regulation Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: Superamendments@treasury.gov.au

Dear General Manager,

ELECTRONIC PORTABILITY REQUEST SCHEME REGULATIONS

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission with respect to the call for comments on the above exposure draft regulations to support the operation of the electronic portability request scheme for superannuation benefits and the accompanying explanatory material.

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 on the provisions as drafted

ASFA is strongly supportive of the legislative change to give support to the existing ATO facility that enables an individual to initiate the rollover of a superannuation benefit through a secure on-line portal made available by the commissioner of Taxation (the ATO individual's on-line portal).

ASFA also supports the extension of the rollover and portability rules to extend the existing rights regarding the rollover of pension benefits to those holding account based pensions and market linked income streams. However, we do have concerns about the ability of a member to initiate the rollover of those benefits through the ATO on-line portal.

ASFA also has concerns about the implications of specific types of accounts being subject to rollover request through the Commissioner of Taxation. These concerns are separately addressed below.

Specific comments on the provisions

Application to pensions

ASFA is gravely concerned about the ability of a person to request the rollover of an allocated pension, an account based pension or a market linked income stream through the Commissioner of Taxation. The decision to change pension providers is not straightforward and to liken it to rolling over an accumulation account benefit is to misunderstand the law and practice.

In practice you cannot roll over a pension. A pension is a contractual arrangement between the pension issuer and the member. Where a member decides to change pension providers the process is that the member requests that the pension be commuted to a lump sum and that lump sum is rolled over to the new pension provider, generally accompanied by a pension application form. A new pension contract is then established.

As part of the commutation process both the member and the provider need to give consideration as to whether the minimum pension payment has been made for the year. If not, the minimum pension payment must be made prior to the commutation. Where more than the minimum required payment has been made the member needs to be aware that a new minimum payment will be required to be made from the new pension with the effect that the total payment that must be made in the year across both providers may exceed that which would have been made had no change of provider occurred.

Additionally, if a market linked pension currently enjoys exemption from the pension assets test, that exemption is non-transferrable and will be lost immediately the pension is commuted. This may have significant adverse impact on the members Centrelink entitlements.

A further difficulty is the restrictive commutation rules applicable to a market linked pension. Whilst funds may provide forms in which pensioners can provide the necessary level of detail and appropriate documentation to support a commutation request, it is difficult to see how the information can be collected and provided through the commissioner of Taxation.

When making the request to roll over a pension through the commissioner of Taxation, part of the mandatory information required will be the account number in the destination fund. Where the destination account is an existing pension, under current rules the rolled over money cannot be added to the existing pension. The outcome of the transfer will be one of:

- the rollover request is rejected by the receiving fund, or
- the trustee of the receiving fund interprets the receipt of the money as a request by the pensioner member to:
 - commute the existing pension to a lump sum (and make any necessary minimum pension payment) and
 - combine the two lump sums and commence a new pension (and establish a new minimum pension payment amount)

ASFA considers that as the complexities and subtleties of the process of changing pension providers are beyond the comprehension of the average superannuation fund member and the implications of a 'wrong' decision are significant, the decision to 'roll over' a pension is not suited to a process that can be initiated remotely and which initiates an irreversible process.

Recommendation

That regulation 6A.02 be amended to include one of the following as an additional condition:

- **That the request is not in respect of an account-based pension, allocated pension or market linked pension.**
- **That the request is not in respect of a pension**

Applicability to certain accounts

ASFA is also concerned about the unintended consequences of the proposed Electronic Portability Request Scheme where the account to be rolled over is a 'risk only' insurance account. Generally these accounts only permit members to hold insurance policies owned by the trustee. That is they do not hold balances for accumulation purposes. Premiums are typically funded by annual contributions or rollovers from another super fund. Other than for a brief period between receipt of the contribution or rollover and the payment of the premium, the account has a Nil balance. The account attracts no fees and policies are renewed annually by election of the member and funded via further contributions or rollovers. Where a member makes a claim under the policy, the benefit is held for a short period until the member or beneficiaries provide instructions. That is, the account cannot be maintained for accumulation purposes.

Our concerns are the unintended consequences which may arise where on using the portal, the member may see the 'risk only (also called 'insurance only') account, which is likely to hold a Nil or minimal balance and elects to have this account closed (e.g. for the simple reason of cleaning up their affairs) and the 'balance' transferred to their nominated fund. If the trustee is to act on those instructions, it would also cancel the members insurance. Given that the member has been individually underwritten, this would necessitate some discussion between the trustee, the member and the adviser to seek instructions before acting. This creates an unnecessary administrative burden. It is also unclear on what process is to be adopted if the member instruction is to be revoked.

ASFA requests that the ATO MCS reporting be amended such that funds can provide an indicator that a reported account a) has insurance attached and b) is an 'insurance only' product so that the ATO is able to separately identify these accounts.

ASFA further requests that the ATO's individuals' on-line portal either does not display these accounts or displays the accounts but prevents the account from being selected for an electronic portability request (with an appropriate message such as insurance only benefit – contact your provider).

Recommendation

That the ATO establish a process to separately identify 'risk only'/'insurance only' accounts and institute a process that prevents these accounts from being rolled over using the electronic portability form.

Liability of trustees

Our final concern is the apparent lack of protection for trustees from potential claims by members where the trustee relies on the ATO's validation of the identity of the member.

ASFA understands that a central aim of the electronic portability request scheme is to facilitate the efficient and prompt roll over and transfer of members benefits. In processing a roll over request a trustee has two primary considerations:

- Is the person making the request who they say they are (The AML/CTF requirement to satisfy yourself that the person/identity exists)
- Is the person making the request the owner of the benefit (the defence against fraud)

Where the process is conducted through the ATO portal, and access to the portal requires a TFN and provision of information about two 'shared secrets' there is a reasonable expectation that the trustee can assume that the ATO has covered off both the AML/CTF and the fraud requirements.

To this end, there is an expectation by the ATO that trustees receiving a rollover request through the Commissioner of Taxation will not need, or be expected to, undertake further proof of identity on the member as that has already been undertaken by the ATO.

Given this ASFA considers that trustees should be given legislated protection from claims by members where the trustee has acted in good faith with respect to requests made through the Commissioner of Taxation. Such a specific indemnity would encourage funds to roll out these monies without delay and as directed by the member through the Commissioner of Taxation.

Recommendation

That the Superannuation Industry (Supervision) Regulations 6.33 be amended to include the following subregulation:

For the avoidance of doubt, the trustee of a regulated superannuation fund or an approved deposit fund is not required to request further information to verify the identity of a member in relation to the rollover or transfer of an amount in accordance with a request received under subregulation (4)".

Recommendation

That a similar change to the above be made to the Retirement Savings Accounts Regulations.

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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 via e-mail to rhodge@superannuation.asn.au or on (02) 8079 0806.

Yours sincerely
Margaret Stewart



General Manager, Policy and Industry Practice