

File Name: 2014/35

22 October 2014

Manager
Benefit and Regulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
Parkes ACT 2600

email: superannuation@treasury.gov.au

Dear Manager,

RE: Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014

Providing certainty for superannuation fund mergers

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the call for comments on the exposure draft legislation which seeks to ensure that individuals whose superannuation benefits are involuntarily transferred from one superannuation plan to another are not disadvantaged.

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 system. 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 per cent of the 12 million Australians with superannuation.

1. General comments

ASFA welcomes the proposal to legislate in this area. The operation of the existing rules has been a matter of concern to trustees contemplating a successor fund transfer (SFT). We understand that this has in some instances resulted in a fund trustee resolving not to proceed with a proposed SFT which would, in all other respects, have been in the best interests of the members of the fund.

Whilst welcoming this specific proposed legislation, we also note that there are many other issues in relation to SFTs that also warrant a legislative solution. This matter is dealt with in the final section of this submission.

Specific comments

2.1 Draft legislation

Having sought comments from ASFA members and reviewed the draft legislation we have identified the following concern with the provisions as drafted:

Item 1 – definition of involuntary roll-over superannuation benefit

Sub-paragraph (b)(iv) in the proposed definition of ‘involuntary rollover superannuation benefit’ deals with the transfer of an accrued default amounts (ADA), where that transfer “happens during the period beginning on 1 July 2013 and ending on 1 July 2017”.

We understand that the period stated is intended to be consistent with the period within which ADAs must be transferred to a MySuper product, pursuant to section 388 of the *Superannuation Industry (Supervision) Act 1993*. We note, however, that section 388 requires the transfer of ADAs to be completed “**before** 1 July 2017” (our emphasis). As a result, we submit that subparagraph (b)(iv) should refer to the period “ending on 30 June 2017”.

We further note that while subparagraph (b)(iv) refers to the period for ADA transfers beginning on “1 July 2013”, item 12 of the proposed amendments, states that “The amendments made by this Schedule apply in relation to superannuation benefits paid on or after 1 July 2015.” We understand that the intention is to ensure that the new definition of ‘involuntary transfer’ covers all transfers of ADAs, but to restrict the relief provided by the amendments to those involuntary transfers (including ADA transfers) that occur from 1 July 2015. We recommend that this be made clearer in the explanatory material (see below).

We also note that there will be a tension with having a 1 July 2015 start date as it will effectively force trustees to consider delaying some ADA transfers despite APRA’s expectation (in SPG410 at paragraph 3) that ‘the attribution of accrued default amounts to a MySuper product would occur at the earliest opportunity possible where it is in the best interests of beneficiaries to do so.’

2.2 Explanatory Material

Paragraph 1.9, the table following, and paragraph 1.26

Paragraph 1.9 and the table following, and paragraph 1.26 address the issue of the involuntary transfer of a benefit supporting a superannuation income stream. The clear implication from the wording is that the transfer of a benefit supporting an income stream involves the cessation of the income stream, the transfer of the interest and the reestablishment of the income stream. This reflects current industry practice. However, the *Australian Government Guide to Social Security Law* Version 1.207 - Released 19 September 2014 (<http://guides.dss.gov.au/guide-social-security-law/4/9/1/30>) states that the social security law currently provides for grandfathering of income streams transferred as part of an SFT. The guide does not provide a specific legislative reference for this view, which seems at odds with industry practice and taxation law.

ASFA, notes that the ‘relief’ these amendments provide for calculating the tax components is tied to a transfer being an ‘involuntary rollover superannuation benefit’ rather than being tied to the definition of an SFT. This creates further doubt as to the applicability of the social security law guide to these transfers. We would support legislative change to give effect to the position on grandfathering as set out in the *Australian Government Guide to Social Security Law* with respect to an SFT.

Paragraph 1.19

Paragraph 1.19 provides commentary on the definition of an ‘involuntary roll-over superannuation benefit’. The paragraph notes that the transfer of an ADA is one type of involuntary roll-over superannuation benefit.

As noted above, it appears that the intention of the amendments is that while all ADA transfers will be deemed to be ‘involuntary roll-over superannuation benefits’, the modified calculation of the tax components will apply only to those ADA transfers which occur during the period 1 July 2015 to 30 June 2017.

In order to avoid confusion, ASFA recommends that a specific statement to that effect be included in the explanatory material.

Paragraph 1.25

The last sentence of this paragraph commences with the words “This will ensure there is no **the** disadvantage” (our emphasis). The word ‘the’ should be deleted.

2. Other comments on successor fund transfers

Although this change is welcome, there exist a number of other circumstances where an involuntary transfer has potentially disadvantageous implications for fund members and others.

The laws involved include taxation, social security and superannuation laws. For example:

- Where a superannuation fund undertakes an SFT, default employers who previously contributed to the transferring fund are required to issue new standard choice forms to all employees who were default members of the transferor fund or who had nominated it as their chosen fund (by virtue of section 32N of the *Superannuation Guarantee (Administration) Act 1992*).
- Binding death benefit nominations made to the transferring fund cease to have effect once the SFT occurs and are not automatically deemed to have been made to the trustee of the successor fund.

There are many more such examples.

ASFA is prepared to discuss with Treasury further adverse impacts on members that may flow from an SFT.

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Should you have any queries in relation to the content of our submission, please contact Principal Policy Adviser, Robert Hodge, on (02) 8079 0806 or by email rhodge@superannuation.asn.au.

Yours sincerely



Glen McCrea
Chief Policy Officer