

File Name: 2015/09

18 March 2015

Manager  
Contributions and Accumulations Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
Canberra ACT 2600

Email: [ENCCTax@Treasury.gov.au](mailto:ENCCTax@Treasury.gov.au)

Dear Manager,

### **Fairer taxation of excess non-concessional contributions reforms - Regulations**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the request for comments on exposure draft regulations and draft explanatory statement to make changes to regulations to implement the Fairer Taxation of Excess Non-concessional Contributions reforms and correct minor technical errors in the regulations.

#### **About ASFA**

ASFA is a non-profit, non-politically aligned national organisation. We are the peak policy and research body for the superannuation sector. Our mandate is to develop and advocate policy in the best long-term interest of fund members. 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 notes that the primary purpose of the regulations is to support the reforms, currently awaiting royal Assent, that will allow individuals to withdraw superannuation contributions in excess of the non-concessional contributions cap made from 1 July 2013 and associated earnings, with these earnings to be taxed at the individual's marginal tax rate.

ASFA supports the making of these regulations as it would enable superannuation providers to release amounts to individuals who elect to withdraw non-concessional contributions under the reforms, thus giving effect to the reforms.

However, ASFA would like it noted that, as these provisions first apply to the 2013-14 income year it will be possible for the ATO to commence issuing excess non-concessional contributions tax assessments under these arrangements immediately after Royal Assent has been granted and the Regulations tabled. ASFA requests that the ATO in determining the timing of the first issue of these new release authorities, gives consideration to the needs of superannuation providers to put in place the necessary new administration arrangements, which is likely to take a few months.

ASFA also notes that in making these regulations, the government is seeking to correct some other minor technical errors in the regulations. In general, these changes are also supported. However, ASFA has concerns with the potential impact of Item 9. These concerns are set out below.

#### **Specific comments**

##### *Draft Regulations*

Having reviewed the draft regulations, ASFA considers that they will be effective in meeting the stated objective of facilitating the release of excess non-concessional contributions.

However, ASFA is concerned that Item 9 will have an adverse, and we believe unnecessary, impact on superannuation administration.

The Explanatory Statement indicates the change is required to correct a mistake made in the *Superannuation Legislation Amendment (2013 Measures No 2) Regulations 2013* (SLA 2013 No 2 regs).

Item 9 removes the capacity of a temporary resident of Australia who has moved permanently to New Zealand from transferring their Australian superannuation account to a New Zealand KiwiSaver Scheme.

By making this change, superannuation funds will need to modify their current KiwiSaver transfer process, which were developed to comply with the SLA 2013 No 2 regs, to include a check to ensure that the transfer is not prevented by SIS Reg 6.01B which can apply to a member who either is or was a temporary resident. In effect, under the proposed change to Regulation 6.01B, for a transfer to KiwiSaver to be possible, the member must be an Australian citizen, a New Zealand citizen, a permanent resident or be a person who, at any time, is the holder of a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa described in Schedule 2 to the *Migration Regulations 1994*. If none of these apply, the transfer to KiwiSaver will not be able to proceed.

In implementing this regulatory rule change funds will need to:

- change their KiwiSaver transfer request forms to include the question about the member's migration status
- modify their staff training to include the material on the visa types
- train enquiry staff in the new requirement (and to handle any complaints)
- amend IT systems to incorporate the temporary residents block
- amend processes to put an automatic block on all otherwise valid transfer requests until the necessary information is received
- amend member communications material
- amend relevant material that is incorporated by reference into a PDS.

Although the Explanatory Statement considers this to be the correction of a mistake, there is little information as to exactly what will be achieved by the change, including what mischief is being addressed.

ASFA notes that currently, to access the KiwiSaver transfer rules a fund member:

- must have permanently departed Australia
- must be a resident of New Zealand
- must be a KiwiSaver account holder.

However, a person can only join KiwiSaver if they are:

- a New Zealand citizen, or entitled to live in New Zealand indefinitely, **and**
- living or normally living in New Zealand (with some exceptions), **and**
- below the age of eligibility for NZ Super (currently 65).

Further, a person cannot join KiwiSaver if they are:

- holding a temporary, visitor, work or student permit
- living overseas, unless they are a government employee:
  - serving outside New Zealand, **and**
  - employed on New Zealand terms and conditions, **and**
  - serving in a jurisdiction where offers of KiwiSaver scheme membership are lawful.

ASFA also notes that the member will be unable to access their Australian sourced amount until at least age 60.

Importantly, even when transferred to a KiwiSaver account, the Australian sourced benefit will be genuine saving for retirement as these Australian-sourced retirement savings held in KiwiSaver schemes:

- cannot be withdrawn to purchase a first home (KiwiSaver schemes can release New Zealand sourced components for such purposes in some circumstances);
- cannot be transferred to a third country (KiwiSaver schemes can transfer New Zealand sourced components, but not Australian sourced amounts, to overseas schemes in some circumstances); and
- may be accessed when the individual reaches age 60 and satisfies the Australian definition of retirement at that age - e.g. the member has permanently retired or has left employment after age 60. This requirement is more restrictive than the standard Australian rules for members with a preservation age of less than 60

Given the above, ASFA considers the proposed change will achieve little. However, it will increase fund administration costs and will make the “KiwiSaver transfer” system even more inefficient. Additionally, the change does not appear to be within the spirit of the agreement with New Zealand as it may prevent some New Zealand resident KiwiSaver account holders from transferring their Australian source superannuation savings to their KiwiSaver account.

In summary, neither the benefit of the proposed change nor the mischief being addressed has been explained. Also consideration does not appear to have been given to the impact of this increase in red tape on Australian superannuation funds or to KiwiSaver funds and members seeking the transfer of their Australian retirement benefits to a KiwiSaver account.

ASFA strongly recommends that the proposal to amend SIS Regulation paragraph 6.01B(3)(b) to remove condition of release Item 113A of Schedule 1 be not proceeded with.

\* \* \* \* \*

If you have any queries or comments regarding the contents of our submission, please contact ASFA's Principal Policy Adviser, Robert Hodge, on (02) 8079 0806 or by email [rhodge@superannuation.asn.au](mailto:rhodge@superannuation.asn.au).

Yours sincerely

Glen McCrea  
Chief Policy Officer