

SUBMISSION

Submission to Treasury —
Amendments to the
transfer balance credit
provisions for successor
fund transfers

24 April 2024

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Retirement, Advice and Investment Division

Treasury

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Via email: superannuation@treasury.gov.au

24 April 2024

Dear Sir/Madam

Amendments to the transfer balance credit provisions for successor fund transfers

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the consultation on amendments to the transfer balance credit provisions for successor fund transfers (SFTs). The proposed amendments are contained in the exposure draft *Treasury Laws Amendment Instrument 2024: Successor Fund transfers and capped defined benefit income streams* (the draft Instrument), released by Treasury on 3 April.

About ASFA

ASFA has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

The proposed amendments address a known issue for fund members impacted by SFTs, and should be finalised without delay

ASFA has a keen focus on matters that impact the outcomes achieved by individuals through the superannuation system, their experiences with the system, and issues that impede the industry's operational effectiveness.

There are instances where superannuation and/or taxation laws fail to address – or adequately address – the implications arising from an SFT. Some issues are substantial and act as impediments to the completion of an SFT. In other cases, while the SFT is able to proceed, the application of the legislation creates sub-optimal outcomes for some fund members.

ASFA has, in consultation with our members, developed an extensive list of issues that detrimentally affect the outcomes and/or experience of individual fund members when they are transferred via an SFT, or increase the risk and cost associated with an SFT. We have, over recent years, raised these with policy makers and regulators.

The proposed amendments to the transfer balance credit provisions for capped defined benefit income streams (CDBIS) impacted by an SFT address one of the issues we have previously identified.

Under current rules, if an individual is a retirement phase recipient of a CDBIS, an SFT results in a debit and a credit to their transfer balance account, as the original superannuation income stream ceases and a new one commences in the successor fund. Currently, the debit and credit could be different amounts, resulting in a net increase or decrease to the individual's transfer balance.

The proposed amendments have the effect that, when an SFT occurs, the credit that arises in a CDBIS recipient's transfer balance account is equal to the debit that arises – that is, the debit and credit cancel each other out and the SFT has no impact on the recipient's transfer balance, putting CDBIS recipients in the same position as if the SFT did not occur. The amendments are welcome and will ensure individuals in receipt of CDBIS are not adversely impacted by an SFT. We recommend the draft Instrument be finalised as soon as possible.

We continue to see a need to address, as part of a focused package of reforms, other identified issues impacting SFTs. While not wishing to delay the amendment currently proposed, we would welcome the opportunity to discuss these with you further.

Recommendation

The proposed amendments to the transfer balance credit provisions for capped defined benefit income streams impacted by a successor fund transfer should be finalised without delay.

Need to clarify retrospective application to individuals impacted by past SFTs

The draft Instrument and accompanying explanatory statement make it clear the proposed amendments are intended to apply to transfer balance credits that arose in relation to SFTs that occurred on or after 1 July 2017. The proposed amendments will operate retrospectively if conditions, specified in the draft Instrument, are met.

Many individuals with CDBIS who were subject to an SFT since 1 July 2017 will have been impacted by the current rules around calculation of the relevant transfer balance credit. Where the application of the current rules meant an individual's transfer balance account would exceed their transfer balance cap, the individual may have paid tax on the 'excess' and/or, if they also held an account-based pension, commuted it to resolve the 'excess' amount (potentially withdrawing the 'excess' from the superannuation system entirely). ASFA requests clarification of how the ATO will administer the retrospective application of the amendments in such situations.

Further, we note that many impacted individuals have already made complaints to their superannuation funds and to the relevant external dispute resolution body, the Australian Financial Complaints Authority (AFCA), even though the outcome was a consequence of the application of the currently legislated transfer balance account rules in the context of an SFT.

We anticipate that where individuals impacted by the current rules do not fall within the conditions for retrospective application of the amendments or have particular expectations of the outcome that should flow from retrospective application of the amendment that may not be met, those individuals may seek to make further complaints. We recommend that the ATO publishes on its website explanatory material for impacted individuals – specifically addressing the circumstances in which the amendments will be applied retrospectively and the outcome of retrospective application. We also suggest it would be beneficial for the ATO to liaise with AFCA to ensure its dispute resolution staff are apprised of those circumstances and of the amendments more generally.

Recommendation

- Clarification should be provided of how the ATO will administer the retrospective application of the amendments.
- The ATO should publish on its website explanatory material for impacted individuals and ensure the Australian Financial Complaints Authority is apprised of the amendments.

Opportunity to review reporting obligations in relation to income streams under an SFT

While we strongly endorse the objectives of the proposed legislation, we also recognise the importance of minimising the administrative burden and compliance costs for APRA-regulated funds and their members. In ASFA's view, it is important to ensure the reporting process is as streamlined and efficient as possible, and that data is only reported where the ATO genuinely require that data in order to administer the taxation law.

ATO reporting obligations for APRA-regulated superannuation funds have evolved over the years, and now require reporting on a close to real time basis. The lodgement of member information statements by superannuation providers is required under subsection 390-5(1) of Schedule 1 to the *Taxation Administration Act 1953*, with the details and format of the data to be reported specified via legislative instruments issued by the Commissioner of Taxation.

In the event of an SFT, compliance with the reporting requirements involves the lodgement of very large volumes of member data by the transferring and/or transferor funds, which must then be processed by the ATO.

In the context of the transfer of CDBIS, it appears the current ATO reporting rules would require successor funds to rely on historical information provided by the transferring fund to ascertain the value to report as a credit. The intent of the amendments is that the credit arising from the 'new' CDBIS will be equal to the debit arising from the cessation of the 'original' CDBIS. That debit value is based on the amount of the transfer balance credit that arose in respect of the commencement of the original CDBIS, minus amounts for commutations or other relevant debits since that time prior to the SFT.

In practice, it is our view that it may be a difficult and cumbersome process for successor funds to reconstruct or verify the historical credit and debit values of each CDBIS transferred under an SFT – especially given the amendments are to apply retrospectively from 1 July 2017. This is of significant concern to ASFA as a breach of subsection 390-5(1) may result in the imposition of substantial administrative penalties.

Given the intent of the proposed amendments is to ensure an SFT has no impact on the transfer balance of a CDBIS recipient, it is ASFA's view there is scope to consider whether reporting of the transfer balance credit by the successor fund is necessary or could be removed. This could be combined with either:

- an equivalent removal of the reporting by the closing fund of the cessation of the pension in that fund; or
- an automatic transfer balance credit being made on the ATO systems to reflect the new pension in the successor fund that is exactly equal to the debit reported by the closing fund (without the successor fund having to report an amount).

We encourage the ATO to engage with industry, as part of its regular process of 'co-design' of the reporting obligations, to identify any opportunity to minimise risk, remove red tape and further enhance administrative efficiency in respect of reporting obligations under an SFT.

Recommendation

The ATO should:

- consider whether the amendments present an opportunity to rationalise and reduce superannuation funds' reporting obligations in relation to successor fund transfers
- engage with industry, as part of its regular process of 'co-design' of the reporting obligations, to ensure data is only required to be reported where it is genuinely needed by the ATO for tax administration purposes.

If you have any queries or comments in relation to our submission, please contact Julia Stannard, Senior Policy Advisor, on (02) 8079 0819 or by email JStannard@superannuation.asn.au.

Yours sincerely

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