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

Email: intrafundconsolidation@treasury.gov.au

Dear Manager,

INTRA FUND CONSOLIDATION OF SUPERANNAUTION INTERESTS

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission with respect to the exposure draft legislation and explanatory material on the intra-fund consolidation of superannuation interests.

ASFA has significant concerns about the effectiveness of the proposed changes in achieving any significant reduction in the number of unnecessary accounts.

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

As outlined in the explanatory material, the measure requires trustees of superannuation funds to have procedures in place such that, where a member has multiple accounts within the fund the member's inactive accounts are consolidated with their active account.

An inactive account is defined as an account with a withdrawal benefit of less than \$1,000 that is not a defined benefit interest and is not supporting an income stream, and where at least one of the following conditions applies:

- no contributions, rollovers or transfers have been received in the past two years, or
- the member is a 'lost member', or
- the member has an interest in an eligible rollover fund

We note that the explanatory material describes the requirements as being the minimum and that there is nothing preventing a trustee from instituting procedures that would result in other accounts being consolidated.

ASFA considers that the minimum requirements on which accounts must be consolidated, as set out above, set the bar too low, that the procedures themselves are too restrictive and will result in too few accounts being amalgamated. We are concerned that the end result will be that many unnecessary accounts will remain in the system for too long, resulting in avoidable costs being incurred by members.

We are particularly concerned that the 'inactive account test' will result in many unnecessary accounts being in existence for at least two and possibly three years before being consolidated.

ASFA also has concerns about the requirement to consolidate to the account which most recently received a contribution, rollover or transfer or into a MySuper account where one exists. It is considered that this rule may produce results that are contrary to the member's wishes.

Analysis

When considering how the intra-fund consolidation rules should operate, ASFA considers that in the first instance consideration should be given to what the desired end state is. Secondly it is necessary to consider how multiple accounts arise. Thirdly it is necessary to consider what rights the member should have in the process and fourthly it is necessary to consider the potential impact of MySuper on any proposed processes or rules.

In ASFA's considered view, the goal should be to establish a process that achieves three goals:

- Where a member has multiple accounts within a fund, those which are not deemed necessary to the member's superannuation requirements are consolidated into another account.
- The consolidation process should result in an outcome which is in the member's best interest.
- The member should retain the right to advise the trustee that certain accounts are not to be auto-consolidated, either within the fund or to another fund. This information should be captured and referred to in any consolidation process, be it an automated process or otherwise.

Significantly, it is ASFA's view that the auto-consolidation process should not be limited to inactive accounts as defined. For example, we see no reason for a trustee to not be required to consider amalgamating a member's interests where two employers are contributing to different accounts for the same member in the same division of the fund.

However, ASFA considers that integral to achieving the desired end state is the need for a trustee to have discretion to not consolidate accounts within a fund where that is deemed to be in the member's best interest. This would overcome the need for a complex series of rules to deal with a range of fund specific situations.

Some of the more common ways in which multiple accounts within a fund may arise are:

- A member is enrolled in the same fund by different employers using slight variations in the member's name.
- A member has an interest in the public offer division of a fund and has also been enrolled in an employer sub plan in the same fund.
- A member with an interest in an employer sub plan ceases working for the employer without advising of a rollover fund. Under the fund rules the member is transferred to the public offer division of the account. The member subsequently joins an employer whose default superannuation arrangement is an employer sub plan in the same fund.

Typical of the complexity with which any auto consolidation rules need to cope is the following:

Within the one superannuation trust a member has two interests, one with a value of \$10,000 in the public offer section and another with a value of \$2,000 in an employer sub plan and which is currently receiving contributions. If the member opened the public offer interest, it may be in the member's best interest that the employer sub plan interest be transferred to the public offer interest and future employer contributions be paid to the public offer interest. This is because the member has made a positive election to join the fund and open that interest. However, the public offer interest may have been created because the member was previously a member of an employer sub plan, ceased working for the employer without notifying details of a rollover fund and therefore under the sub plan fund rules was transferred to the public offer section of the fund. In this circumstance it would be appropriate for the public offer interest to be transferred to the current active employer sub plan interest as the public offer interest was created by default.

The availability of a trustee discretion would facilitate an appropriate decision being made in such cases.

Importantly, ASFA considers that the member should be advised of any proposed auto-consolidation and be given the opportunity to either object to the proposed amalgamation or advised that the amalgamation should be conducted in a different manner. (For example, in the situation outlined above the member who opened the interest in the public offer section of the fund may prefer to have that interest transferred to the employer sub plan interest.

It is envisaged that the commencement of MySuper from 1 July 2013 may create new challenges. In the absence of detailed rules surrounding its implementation, ASFA has concerns that one immediate outcome of the MySuper regime may be a proliferation of new accounts. For example, where the fund chooses to not make its current default offering the new MySuper offering, it is possible that after the commencement of MySuper every new contribution paid in respect of a current default member will have to be paid into a new MySuper account.

Such a situation would result in more, not fewer, unnecessary accounts. Rather than leave the resolution of such a situation to the trustee's MySuper transitioning strategy (or until the 'old' interest becomes inactive and subject to the current proposed auto consolidation regime), ASFA considers that the situation should be addressed 'upfront' and appropriate solutions identified before such situations arise.

In summary, ASFA considers that the bar should be set higher with respect to which accounts are to be exposed to the potential of consolidation. This should be achieved by removing the inactive

test (a test that is more appropriate to the inter fund auto consolidation process) and removing the account balance test.

To deal with the expected multiplicity of arrangements that exist, ASFA proposes that the rules include a trustee discretion to not consolidate specific interests, or to consolidate in a manner that is contrary to the rules. We are concerned that no matter how well the rules are designed, there will always arise situations where the outcome predicated by the rules will not necessarily be in the best interest of the member or produce the desirable outcome. This will particularly be the case should it be agreed to include all accounts, not just those that are inactive, and all balance sizes.

Specific comments on the exposure drafts

The following comments are made in the context of these provisions establishing the base requirement, with further detail to be provided within supporting regulations.

The draft legislation

Commencement information

The commencement dates in the table on page 1 for Items 3 and 4 appear to refer to the wrong items in the draft legislation.

- Should provision 3, referring to Item 4, commence when the MySuper provisions commence (not 1 July 2012)?
- Should provision 2 (referring to Item 3) commence on 1 July 2012 (along with Items 1 and 2 referred to in provision 1)?

Item 1

Subsection 10(1)

The definition of *inactive superannuation interest* refers to an interest in a superannuation fund. However section 108A refers to a superannuation entity, which extends the provisions to approved deposit funds (ADFs). As the intent of section 108A appears to be to include ADFs the appropriate term to use in the definition in section 10(1) is 'superannuation entity'.

ASFA considers that this is an appropriate definition of an inactive account for the purposes of auto consolidation of accounts. It will be the appropriate definition for inter fund consolidation of accounts (proposed to occur from 1 January 2014) but as discussed above, ASFA considers that it should not be the criteria for selecting accounts to be consolidated under the intra fund account consolidation process.

The definition of inactive accounts makes provision for regulations to be made excluding particular interests (10(1) definition of *inactive superannuation interest* (a)(iii)). ASFA requests that immediate contemplation be given to the making of regulations that would exclude an interest where the interest represents the transfer of benefits from another jurisdiction. For some funds, QROPS benefits (transfers from the United Kingdom to a Qualified Registered Overseas Pension Scheme) are maintained in a separate account. It is possible that similar arrangements may be put in place to cope with Trans Tasman transfers – New Zealand benefits transferred to Australia under legislation proposed for the 2012 calendar year.

It is noted that in the design of the inter fund consolidation rules consideration will need to be given to whether an account contains a QROPS or NZ transfer amount and whether the receiving fund is able to receive such a transferred amount under the fund or other rules.

Should the ASFA proposal of exposing all interest to the intra fund consolidation process be adopted then there will need to be specific exclusion of accounts mirroring (a) in the proposed definition of *inactive superannuation interest* (i.e. defined benefit interests, interests supporting an income stream, interests of a kind specified in the regulations).

Item 3

Section 108A

- As noted above, ASFA suggests that the requirement in 108A(1)(a) should be to have a procedure for consolidating 'multiple superannuation interests'.
- 108A(1)(b) requires the process to be on an annual basis, but does not appear set a start date other than once the trustee has established the rules. It would appear that a trustee could comply with the law by establishing their rules on 1 July 2013 and completing their first consolidation process by 30 June 2014.

ASFA suggests that the legislation require the rules to be established and the first consolidation process completed by 30 June 2012, and undertaken on an annual basis thereafter. The wording will need to contemplate the establishment of new superannuation entities.

- Section 108A(1)(a)(ii) requires the interest to be merged to have the same 'rights and benefits as one or more superannuation interests of the member'. At face value this requirement appears to be unnecessarily restrictive. For example it would appear to prevent the merging of an inactive account with an insured benefit with an active account that does not have insurance. ASFA would prefer the provisions to be more flexible such that the trustee could advise the member that it is proposed that the interest and the insurance benefit be transferred to the consolidated account. That is, the trustee be able/required to act in the best interest of the member when consolidating accounts.
- The requirement in subsection 108A(a) is to consolidate two or more inactive interests. The use of the words 'consolidation of those interests', 'merged into one of the interests' and 'the other interests then being cancelled' in 108A(1)(b)(i) suggests that the inactive interests are merged into a single inactive interest. The effect would be that the member would then have a single inactive interest and perhaps one or more active interests. Is not the intent of the proposal to merge inactive interests either into a single inactive interest or preferably with an active interest where one exists? Example 3.1 in the explanatory material would indicate that the latter outcome is contemplated.
- 108A(b)(ii) prohibits the imposition of fees with respect to any merger or cancellation of an interest. Clarification is required as to whether 'buy sell' spreads are considered to be fees for this purpose.
- 108A(c) requires the publishing of the entity's rules on consolidation of accounts in such a way that 'will make the entity's members or depositors aware of the procedure...'. ASFA

seeks clarification of this requirement with respect to a member who is lost-uncontactable and whose interests are to be merged in accordance with the procedures.

Clarification is also sought as to whether the rules can be 'published' by providing the member with a notice of 'intent to consolidate' which sets out how it is proposed that the member's interests will be consolidated.

- 108A(d) requires consolidation into the interest to which a contribution, rollover or transfer was most recently made. As stated above, ASFA considers that while generally this may result in the appropriate outcome for the member this may not always be the case. Of particular concern is where a member with an existing account joins a new employer who opens a new account with the same fund. It is quite possible that the earlier account contains the information about the original communications the member would have received when first joining the fund. It may also contain the member's nominated beneficiary details, insurance elections and investment choices. The member's recorded start date with the fund may carry implications for the scope of the insurance cover. It would not seem appropriate to close the old interest and retain the new interest under such circumstances solely on the basis that the new account was the account which most recently received a contribution.

Item 4

Section 108A

- This item, which will replace existing subsection 108A(d) on the commencement of the MySuper Core Provisions legislation, will require the consolidated interest to be the member's MySuper interest where one exists. Under current proposals the 'rights and benefits' attaching to MySuper interests will generally be different to (greater than) the rights and interests of existing member interests. This will make satisfaction of the 'same rights and benefits' test in subsection 108A(1)(a)(ii) difficult to achieve and may result in very few accounts being consolidated. For this reason ASFA prefers a broad requirement for the consolidation of multiple interests that the trustee be given a discretion as to which accounts are consolidated into which accounts and that basic requirement be that the consolidation process is undertaken in the member's best interest.

Other matters

Whilst the explanatory material states that member consent is not required, this has not been specifically addressed in the legislation. Noting our preference for this process to operate on an opt out basis (a member must be notified of the proposal to consolidate accounts unless the member is lost-uncontactable) we would request that, should the provisions operate as proposed then a specific provision should be included to state that having met the requirements of 108A(c) (the trustee has notified members' generally of the process) no further notification is required. At the same time, consideration should be given as to whether by complying with the requirements of the legislation the trustee is protected from any liabilities that may arise from the consolidation process.

Separately, the legislation should provide that member consent is not required where superannuation interests being consolidated have the same rights and benefits. Typically this would occur where a member is enrolled by more than one employer under a default fund

arrangement with the same fund and the member has not made an investment choice or other decision that would vary the rights and benefits between the various interests. In these circumstances consolidation of the accounts by the trustee should be expected and the trustee given the protection of the law when doing so.

Whilst non-compliance with the requirement to have appropriate rules in place is an offence, there does not seem to be a penalty regime with respect to a trustee not complying with its own rules. ASFA seeks clarification of this issue.

Does the proposed regime extend to RSA's? Whilst it is arguable that the structure of an RSA is such that multiple account holders are not exposed to multiple fees, holding multiple accounts within the one institution may effectively defer the date on which the RSA issuer is required to compulsorily notify the RSA holder of the implications for holding large amounts in an RSA product.

Confirmation is required that the publication requirement applies to whatever consolidation rule the trustee adopts and not just to the rules relating to inactive small balance accounts.

Clarification is sought that the closing of an account (interest) does not require the crystallisation of the member's tax free component with respect to that interest. It is ASFA's view that because the money is not being moved out of the fund crystallisation of the tax components should not be required. To do otherwise may be to the detriment of the member.

Explanatory Memorandum

In addition to the matters raised above which will impact on the explanatory memorandum, ASFA would like to raise the following matters:

Paragraph 3.12

It would assist the reader if examples could be given of some of the acceptable methods of publishing the rules. Specific mention needs to be given to how to notify a member who is lost-uncontactable.

Paragraph 3.15

The intent of this paragraph is unclear. It would appear to imply that different investment options within the one product will always have the same rights and benefits. This is not always the case, especially where the option is an illiquid investment option.

Paragraph 3.26, Example 3.1

The example describes an account as being 'either inactive or lost'. We note that the term 'lost' is a subset of the section 10(1) definition of an 'inactive superannuation interest'.

Regulations

ASFA seeks early consultation on the proposed scope of content for the regulations.

ASFA would like the regulations to include a requirement that prior to the consolidation being undertaken the member must be notified of the proposed consolidation arrangements and be given a set time within which to respond if the consolidation is not to proceed as outlined in the notification.

The regulations could provide clarification the acceptable ways of notifying members about the consolidation process.

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

Yours sincerely
Margaret Stewart

A handwritten signature in black ink, appearing to read 'M Stewart', with a long, sweeping underline that extends to the left.

General Manager, Policy and Industry Practice