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General Manager
Revenue Group Law Design Practice
The Treasury
Langton Crescent
Parkes ACT 2600

Email: cgt_super_rollover@treasury.gov.au

Dear General Manager,

RE: Income Tax Relief to Facilitate the Government's MySuper Reforms

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the request for comments on the draft legislation implementing the Government's announcement that it would provide income tax relief to ensure default members of superannuation funds are not adversely affected if their account balances are mandatorily transferred to another fund as a result of the MySuper reforms.

ASFA strongly supports the proposal to provide this relief.

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% of the 12 million Australians with superannuation.

General comments

We have sought the views of the members of our Tax Standing Advisory Panel.

The comments we have received indicate that, while the legislation will be effective in achieving its stated aim, there will be considerable difficulties faced by funds in its implementation with respect to tax deductions for personal contributions, contribution splitting and CGT rollover relief.

Specific comments

Tax deductions for personal contributions

Although the legislation will permit a member to give a notice of intention to claim a deduction for a personal contribution to the MySuper fund, the information about contributions that is required to process the notice will not be available to the MySuper fund as it does not form part of the mandatory data set for a rollover. To process the notice the MySuper fund will need to seek the information from the original fund.

ASFA suggests that, even with this information, the ATO's position on proportioning, as set out in TR 2010/1 example 10 (see paragraphs 94 to 99J), would make the process almost unworkable where the member has, since the contribution was made, effected a partial rollover or withdrawal or has commenced a pension. ASFA suggests that Treasury review TR2010/1 so as to understand the complex administration problems created by the ATO's interpretation of the law and consider amending the law to resolve this specific situation and the situation more generally.

Paragraphs 1.55 to 1.57 of the explanatory material deal with this topic. ASFA suggests that paragraph 1.57 be amended to reflect that in certain circumstances the compulsory transfer of an accrued default amount will take place under the successor fund transfer rules.

Contribution splitting

Without relief, a member will be required to provide a notice to split contributions prior to the compulsory rollover being undertaken. ASFA suggests that, to avoid the potential that a member may be disadvantaged, the law should be amended to allow the contributions splitting notice to be served on the member's MySuper successor fund.

CGT rollover relief

Paragraph 1.23 provides an example where a fund only provides a tailored MySuper product. ASFA understands that, in practice, funds authorised to offer a tailored MySuper product will frequently also offer a generic MySuper product. Further, proposed amendments to the Tranche 4 bill will prohibit a fund which offers a generic MySuper from preventing an existing member from joining that product. ASFA suggests that the example be revisited with a view to providing a more realistic example.

Other matters

ASFA is concerned with the lack of relief where a member's accrued default amount is moved within a fund to a MySuper product and the underlying investment is held in a PST or life company. For example the current product may be invested in a life policy or through a PST but the MySuper offering is a new master trust product with direct investments. In the absence of rollover relief, where the underlying investment is carrying capital and tax losses the transfer of the members' benefit would see a loss of the tax benefit resulting in a reduction in the value of the members' benefits.

To address the above situation ASFA requests that consideration be given to providing relief for situations where the compulsory transfer to a MySuper product occurs within a fund but the transfer necessitates the realisation of an investment in an underlying PST or an insurance policy in a life insurance company that results in a reduction of the member's benefit. Without the relief, members in these situations may see a reduction in benefits caused by the compulsory transfer of their benefits to a MySuper product.

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I trust that the information contained in this submission is of value. We would be pleased to meet with you to discuss our submission.

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.

Yours sincerely



Fiona Galbraith
Director, Policy