

EXPOSURE-DRAFT

1
2
3
4
5
6

Inserts for
**Tax Laws Amendment (2013
Miscellaneous Measures No. 1) Bill 2013:
MySuper loss transfer and asset roll-over**

EXPOSURE DRAFT

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule#, Parts 1 and 2	The day this Act receives the Royal Assent.	
2. Schedule#, Parts 3 and 4	2 July 2019	

EXPOSURE-DRAFT

1 **Schedule #—Loss relief and asset roll-over for**
2 **transfer of amounts to a MySuper**
3 **product**

4 **Part 1—Main amendment**

5 *Income Tax Assessment Act 1997*

6 **1 At the end of Part 3-30**

7 Add:

8 **Division 311—Loss relief and asset roll-over for transfer of**
9 **amounts to a MySuper product**

10 **Table of Subdivisions**

11 Guide to Division 311

12 311-A Object of this Division

13 311-B Choosing loss transfers and asset roll-overs

14 311-C Consequences of choosing to transfer losses

15 311-D Consequences of choosing asset roll-over

16 311-E Choices

17 **Guide to Division 311**

18 **311-1 What this Division is about**

19 This Division provides tax relief for certain entities if a member's
20 accrued default amount is required to be transferred to a MySuper
21 product in another complying superannuation fund.

22 A trustee of a complying superannuation fund, a life insurance
23 company or a trustee of a pooled superannuation trust that satisfies
24 certain conditions can:

25 (a) choose to transfer a loss; or

26 (b) choose an asset roll-over; or

EXPOSURE-DRAFT

(c) choose to transfer a loss and choose an asset rollover.

Note 1: This Division and associated provisions will be repealed on 2 July 2019: see Part 3 of Schedule# to the *Tax Laws Amendment (2013 Measures No. 1) Act 2013*.

Note 2: Part 2C of the *Superannuation Industry (Supervision) Act 1993* provides rules about MySuper products.

Operative provisions

Subdivision 311-A—Object of this Division

Table of sections

311-5 Object

311-5 Object

The object of this Division is to ensure that default members of complying superannuation funds are not adversely affected if their accrued default amounts are compulsorily transferred to MySuper products in other complying superannuation funds.

Subdivision 311-B—Choosing loss transfers and asset roll-overs

Table of sections

311-10 Certain entities can choose transfer of losses, asset roll-overs, or both

311-10 Certain entities can choose transfer of losses, asset roll-overs, or both

- (1) If an *arrangement is made for which the conditions in this section are satisfied, a trustee of a *complying superannuation fund, a *life insurance company or a trustee of a *pooled superannuation trust (the *transferring entity*) can:
- (a) choose to transfer a loss; or
 - (b) choose an asset roll-over; or
 - (c) choose to transfer a loss and choose an asset roll-over.

Entity must hold certain assets

- (2) The first condition is satisfied if, just before the *arrangement was made:

EXPOSURE-DRAFT

-
- 1 (a) for an entity that is a trustee of a *complying superannuation
2 fund (the *original fund*)—its assets included assets other
3 than:
4 (i) a *complying superannuation/FHSA life insurance
5 policy; or
6 (ii) units in a *pooled superannuation trust; or
7 (b) for an entity that is a *life insurance company—a *complying
8 superannuation/FHSA life insurance policy issued by the
9 entity was held by a complying superannuation fund (the
10 *original fund*); or
11 (c) for an entity that is a trustee of a *pooled superannuation
12 trust—units in the entity were held by a complying
13 superannuation fund (the *original fund*).

14 *Transfer of accrued default amount and membership of continuing*
15 *fund*

- 16 (3) The second condition is satisfied if:
17 (a) under the *arrangement, the original fund transfers an
18 *accrued default amount of a member (within the meaning of
19 the *Superannuation Industry (Supervision) Act 1993*) to a
20 *complying superannuation fund (the *continuing fund*); and
21 (b) the amount is transferred to the continuing fund:
22 (i) as a result of an election made under
23 paragraph 29SAA(1)(b) of that Act; or
24 (ii) under section 388 of that Act; and
25 (c) the member is a member of the continuing fund immediately
26 after the time that the transfer occurs (the *completion time*).

27 *Choice relates to period from 1 July 2013 to 1 July 2017*

- 28 (4) The third condition is satisfied if the completion time occurs during
29 the period beginning on 1 July 2013 and ending on 1 July 2017.

30 **Subdivision 311-C—Consequences of choosing to transfer** 31 **losses**

32 **Table of sections**

33	311-15	Who losses can be transferred to
34	311-20	Losses that can be transferred
35	311-25	Effect of transferring a net capital loss
36	311-30	Effect of transferring a tax loss
37	311-35	Realisation of certain assets after completion time

EXPOSURE-DRAFT

1 311-15 Who losses can be transferred to

2 The transferring entity can choose to transfer any or all of the
3 transferring entity's losses set out in section 311-20, in whole or in
4 part, to one or more of the following entities (a *receiving entity*):

- 5 (a) the continuing fund for the choice;
- 6 (b) a *pooled superannuation trust in which units are held by the
7 continuing fund for the choice just after the completion time;
- 8 (c) a *life insurance company with which a *complying
9 superannuation/FHSA life insurance policy is held by the
10 continuing fund for the choice just after the completion time.

11 311-20 Losses that can be transferred

12 (1) The transferring entity's losses that can be transferred are:

- 13 (a) any of its *net capital losses for income years earlier than the
14 income year that includes the completion time (the *transfer*
15 *year*), to the extent that they were not *utilised before the
16 completion time; and
- 17 (b) any net capital loss it would have made for the transfer year
18 were the transfer year to have ended at the completion time;
19 and
- 20 (c) any of its *tax losses for income years earlier than the transfer
21 year, to the extent that they were not utilised before the
22 completion time; and
- 23 (d) any tax loss it would have incurred for the transfer year were
24 the transfer year to have ended at the completion time;

25 worked out subject to the modifications set out in this section.

26 Note: If the entity choosing to transfer losses also chooses an asset roll-over
27 for the same arrangement, none of the CGT events for the roll-over
28 will contribute towards a loss transferred under this Subdivision (see
29 section 311-45 and subsections 311-50(1) and 311-55(1)).

30 (2) For a choice under Subdivision 311-B by an entity that is a trustee
31 of a *complying superannuation fund, work out those losses by
32 only considering *capital gains, *capital losses, assessable income
33 and deductions to the extent that they are reasonably attributable to
34 the *accrued default amount of the member.

35 (3) For a choice under Subdivision 311-B by an entity that is a *life
36 insurance company, work out those losses by only considering the
37 following to the extent that they are reasonably attributable to the
38 *accrued default amount of the member, and to a *complying

EXPOSURE-DRAFT

1 superannuation/FHSA life insurance policy issued by the
2 transferring entity and held by the original fund:

- 3 (a) *capital gains from *complying superannuation/FHSA assets;
- 4 (b) *capital losses from complying superannuation/FHSA assets;
- 5 (c) assessable income covered by subsection 320-137(2) (about
6 complying superannuation/FHSA assets);
- 7 (d) deductions covered by subsection 320-137(4) (about
8 complying superannuation/FHSA assets).

9 (4) For a choice under Subdivision 311-B by an entity that is a trustee
10 of a *pooled superannuation trust, work out those losses by only
11 considering *capital gains, *capital losses, assessable income and
12 deductions to the extent that they are reasonably attributable:

- 13 (a) to the *accrued default amount of the member; and
- 14 (b) to units in the transferring entity held by the original fund.

15 **311-25 Effect of transferring a capital loss**

16 To the extent that a loss of a kind referred to in
17 paragraph 311-20(1)(a) or (b) is transferred to a receiving entity:

- 18 (a) if the loss is for an income year earlier than the transfer
19 year—the transferring entity is taken not to have made the
20 loss for that earlier income year; and
- 21 (b) if the loss is for the transfer year—the following is reduced
22 by an amount equal to the transferred amount:
 - 23 (i) if the transferring entity is a *life insurance company—
24 the sum of the transferring entity’s *capital losses from
25 *complying superannuation/FHSA assets for the transfer
26 year; or
 - 27 (ii) otherwise—the sum of the transferring entity’s capital
28 losses for the transfer year; and
- 29 (c) if the receiving entity is a life insurance company—an
30 amount equal to the transferred amount is taken to be a
31 capital loss from complying superannuation/FHSA assets
32 made by the receiving entity on the day of the completion
33 time; and
- 34 (d) if the receiving entity is not a life insurance company—an
35 amount equal to the transferred amount is taken to be a
36 capital loss made by the receiving entity on the day of the
37 completion time.

EXPOSURE-DRAFT

311-30 Effect of transferring a tax loss

To the extent that a loss of a kind referred to in paragraph 311-20(1)(c) or (d) is transferred to a receiving entity:

- (a) if the loss is for an income year earlier than the transfer year—the transferring entity is taken not to have made the loss for that earlier income year; and
- (b) if the loss is for the transfer year—the following is reduced by an amount equal to the transferred amount:
 - (i) if the transferring entity is a *life insurance company—the sum of the transferring entity’s deductions covered by subsection 320-137(4) (about complying superannuation/FHSA assets) for the transfer year; or
 - (ii) otherwise—the sum of the transferring entity’s deductions for the transfer year; and
- (c) for the purposes of section 36-15, an amount equal to the transferred amount is taken to be:
 - (i) if the receiving entity is a *life insurance company—a tax loss from *complying superannuation/FHSA assets that the receiving entity incurred for the income year of the receiving entity immediately prior to the income year in which the completion time occurs; or
 - (ii) otherwise—a tax loss that the receiving entity incurred for the income year of the receiving entity immediately prior to the income year in which the completion time occurs; and
- (d) for all other purposes of this Act, an amount equal to the transferred amount is taken to be:
 - (i) if the receiving entity is a life insurance company—a tax loss of the *complying superannuation/FHSA class that the receiving entity incurred on the day of the completion time; or
 - (ii) otherwise—a tax loss that the receiving entity incurred on the day of the completion time.

311-35 Realisation of certain assets after completion time

- (1) In working out the *net capital loss referred to in paragraph 311-20(1)(b), or the sum of the transferring entity’s *capital losses referred to in paragraph 311-25(b), treat any amount:
 - (a) that is a *capital loss or *capital gain that the transferring entity makes after the completion time; and

EXPOSURE-DRAFT

1 (b) that arises as a result of realisation of assets for the purpose
2 of enabling payment to the receiving entity in connection
3 with the transfer of the *accrued default amount of the
4 member;
5 as if the loss or gain were made during the transfer year but before
6 the completion time.

7 (2) In working out the *tax loss referred to in paragraph 311-20(1)(d),
8 or the sum of the transferring entity's deductions referred to in
9 paragraph 311-30(b), treat any amount:

10 (a) that is an amount of a deduction for the transferring entity, or
11 an amount of assessable income by the transferring entity,
12 arising after the completion time; and

13 (b) that arises as a result of realisation of assets for the purpose
14 of enabling payment to the receiving entity in connection
15 with the transfer of the *accrued default amount of the
16 member;

17 as if the amount of the deduction, or the amount of income, arose
18 during the transfer year but before the completion time.

19 **Subdivision 311-D—Consequences of choosing asset roll-over**

20 **Table of sections**

21	311-40	Assets roll-over
22	311-45	CGT assets
23	311-50	Revenue assets
24	311-55	Further consequences for roll-overs involving life insurance companies

25 **311-40 Assets roll-over**

26 (1) The transferring entity can choose an asset roll-over for an asset in
27 relation to which, under the *arrangement, one or more *CGT
28 events happen if:

29 (a) subsection (2) applies to the asset; and

30 (b) an asset (the *received asset*) becomes an asset of one of the
31 following (the *receiving entity*) as a result of the event:

32 (i) the continuing fund for the choice;

33 (ii) a *pooled superannuation trust in which units are held
34 by the continuing fund for the choice just after the
35 completion time;

36 (iii) a *life insurance company with which a *complying
37 superannuation/FHSA life insurance policy is held by

EXPOSURE-DRAFT

the continuing fund for the choice just after the completion time.

(2) The asset is an asset to which this subsection applies (an *original asset*) if:

- (a) in a case where the entity choosing under Subdivision 311-B is a trustee of a *complying superannuation fund—the asset is reasonably attributable to the *accrued default amount of the member; or
- (b) in a case where the entity choosing under Subdivision 311-B is a *life insurance company—the asset is reasonably attributable to:
 - (i) the accrued default amount of the member; and
 - (ii) a *complying superannuation/FHSA life insurance policy issued by the transferring entity and held by the original fund; or
- (c) in a case where the entity choosing under Subdivision 311-B is a trustee of a *pooled superannuation trust—the asset is reasonably attributable to:
 - (i) the accrued default amount of the member; and
 - (ii) units in a pooled superannuation trust issued by the transferring entity and held by the original fund.

311-45 CGT assets

If the roll-over is chosen:

- (a) disregard any *capital gain or *capital loss the transferring entity makes from transferring an original asset to the receiving entity; and
- (b) the first element of the received asset's *cost base, in the hands of the receiving entity, is the transferring entity's cost base just before the time of the *CGT event; and
- (c) the first element of the received asset's *reduced cost base, in the hands of the receiving entity is worked out similarly.

311-50 Revenue assets

Consequences for transferring entity

- (1) For each of the original assets that are *revenue assets, the transferring entity's gross proceeds for the relevant *CGT event are taken, for the purposes of this Act, to be the amount (the *deemed*

EXPOSURE-DRAFT

1 *proceeds*) the transferring entity would need to have received in
2 order to have a nil profit and nil loss for the event.

3 *Consequences for receiving entity*

- 4 (2) For each of the received assets that are *revenue assets, the
5 receiving entity is taken, for the purposes of this Act, to have
6 incurred an amount for that asset at the time of the *CGT event that
7 is equal to the deemed proceeds for the corresponding original
8 asset.

9 **311-55 Further consequences for roll-overs involving life insurance** 10 **companies**

- 11 (1) Section 320-200 (about consequences of transferring assets to or
12 from a complying superannuation/FHSA asset pool) does not apply
13 for a *CGT event for the roll-over if either the transferring entity or
14 the receiving entity is a *life insurance company.
- 15 (2) If the receiving entity for the roll-over is a *life insurance
16 company, each received asset of that entity is taken:
- 17 (a) to be a *complying superannuation/FHSA asset of that entity;
18 and
19 (b) not to be, in whole or in part, a *life insurance premium.

20 **Subdivision 311-E—Choices**

21 **Table of sections**

22 311-60 Choices

23 **311-60 Choices**

- 24 (1) A choice under this Division must be made:
- 25 (a) by the day the transferring entity's *income tax return is
26 lodged for the transfer year for the entity; or
27 (b) within a further time allowed by the Commissioner.
- 28 (2) The way the transferring entity's *income tax return is prepared is
29 sufficient evidence of the making of the choice.
30

EXPOSURE-DRAFT

1

2 Part 2—Other amendments

3 *Income Tax Assessment Act 1997*

4 **2 Subsection 40-340(1) (at the end of the table)**

5 Add:

7	Disposal of asset as part of transfer to a MySuper product	The transferor chooses a roll-over under Subdivision 311-D in relation to the disposal.
---	--	---

6 **3 Section 112-97 (at the end of the table)**

7 Add:

8

36	An accrued default amount of a member of a complying superannuation fund is transferred to a MySuper product in another complying superannuation fund	First element of cost base and reduced cost base	Section 311-45
----	---	--	----------------

9 **4 Subsection 115-30(1) (at the end of the table)**

10 Add:

11	A *CGT asset that the acquirer *acquired as a received asset for a roll-over under Subdivision 311-D	when the transferring entity for the roll-over acquired the corresponding original asset for the roll-over
----	--	--

11 **5 At the end of section 290-170**

12 Add:

13 *Amounts transferred to a MySuper product in another complying*
14 *superannuation fund*

15 (6) If:

16 (a) under an *arrangement, the fund (the *original fund*) transfers
17 an *accrued default amount of a member (within the meaning
18 of the *Superannuation Industry (Supervision) Act 1993*):

19 (i) as a result of an election made under
20 paragraph 29SAA(1)(b) of that Act; or

EXPOSURE-DRAFT

-
- 1 (ii) under section 388 of that Act;
2 to another superannuation fund that is a continuing fund for
3 the purposes of subsection 310-10(3); and
4 (b) the arrangement takes effect after the making of your
5 contribution; and
6 (c) you are a member (within the meaning of that Act) of the
7 receiving entity immediately after the arrangement takes
8 effect; and
9 (d) you did not give a notice under subsection (1) in relation to
10 the contribution while you were a member (within the
11 meaning of that Act) of the original fund;
12 then subsections (1) to (4) of this section, and section 290-180,
13 apply as if references in those subsections to the original fund (or
14 the trustee of the original fund) were references to the continuing
15 fund (or the trustee of the continuing fund).

16 6 At the end of section 290-180

17 Add:

18 *Amounts transferred to a MySuper product in another complying*
19 *superannuation fund*

20 (6) If:

- 21 (a) under an *arrangement, the fund (the *original fund*) transfers
22 an *accrued default amount of a member (within the meaning
23 of the *Superannuation Industry (Supervision) Act 1993*):
24 (i) as a result of an election made under
25 paragraph 29SAA(1)(b) of that Act; or
26 (ii) under section 388 of that Act;
27 to another superannuation fund that is a continuing fund for
28 the purposes of subsection 310-10(3); and
29 (b) the arrangement takes effect after a valid notice is given
30 under section 290-170; and
31 (c) you are a member (within the meaning of the *Superannuation*
32 *Industry (Supervision) Act 1993*) of the receiving entity
33 immediately after the arrangement takes effect; and
34 (d) you seek to vary the valid notice after you cease to be a
35 member (within the meaning of that Act) of the original fund;
36 then subsections (2) and (3A) apply as if references in those
37 subsections to the original fund (or the trustee of the original fund)
38 were references to the continuing fund (or the trustee of the
39 continuing fund).
-

EXPOSURE-DRAFT

1 **7 Subsection 995-1(1)**

2 *accrued default amount* has the meaning in section 20B of the
3 *Superannuation Industry (Supervision) Act 1993*.

4

EXPOSURE-DRAFT

1

2 **Part 3—Repeals**

3 *Income Tax Assessment Act 1997*

4 **8 Subsection 40-340(1) (table item 7)**

5 Repeal the item.

6 **9 Section 112-97 (table item 36)**

7 Repeal the item.

8 **10 Subsection 115-30(1) (table item 11)**

9 Repeal the item.

10 **11 Subsection 290-170(6)**

11 Repeal the subsection.

12 **12 Subsection 290-180(6)**

13 Repeal the subsection.

14 **13 Division 311**

15 Repeal the Division.

16 **14 Subsection 995-1(1) (definition of *accrued default amount*)**

17 Repeal the definition.