

Intra fund consolidation of interests

1. Timing

It will be difficult for some RSEs to develop a policy on intra fund consolidation by 1 January 2013 and perform the initial annual consolidation by 30 June 2013 in the absence of final legislation.

2. Determining whether to merge accounts

This “test” for a trustee should be based on Successor Fund Transfer provisions “equivalent rights” which is well understood and should replace the subjective member's best interest test.

Trustees should be given statutory protection for good faith decisions that they make about consolidation. A new provision should be included to this effect. The examples in paragraphs 1.24 – 1.29 of the EM highlight that there are difficult judgments that a trustee may not be best placed to make about what is in the best interests of a member.

Further, example 1.2 in paragraph 1.26 of the EM raises the issue of whether this example contradicts other SIS provisions about member investment choice which allow a member to “direct” a trustee to invest in specified investment strategies.

Usually this is within an interest or product but it could amount to particular interests representing a separate directed investment strategy. If a member has directed the trustee to invest in something that can be seen as an investment strategy then this should be paramount and the trustee should not be obliged to over-ride this.

Related to this, s108A (1)(c) should be amended so that the test for whether consolidation should be the trustee’s reasonable opinion rather than an objective matter of fact. I.e. it should be amended to require the trustee to merge “if the trustee reasonably believes it is in the best interests of the member to do so”.

3. Member protection and consent

In the absence of a \$1,000 threshold, which appeared in the original exposure draft, it should be mandatory to provide members with the ability to opt out of the consolidation process when a trustee has determined consolidation should occur. This would provide an important protection against inadvertent consolidation even where the trustee has made an “equivalent rights” judgement.

Considering that much of the objective of intra-fund consolidation should be addressed after the first year, we would like to be able to develop a solution that is “light-touch”. Therefore, we would seek clarity that buy/sell spreads are not considered a “fee” for the purposes of intra-fund consolidation. Where consolidation may be occurring across products or plans, in particular, “merging” accounts will involve a transaction that incurs a buy/sell spread, and we seek confirmation that this will meet the requirements.

2. Superannuation fund notification

1. Semi-annual calculation and notification of 'payable' amounts of fees and taxes

It is not possible to 'pre-calculate' as taxes such as contributions tax are calculated annually or upon exit. (Refer '*any taxes paid or payable.*' point # 17 of EM).

If the intention of this initiative is to provide member with a mechanism for reconciling their payslip to their super fund contributions then it is not necessary to display anything other than the contributions received and the date at which they are received.

2. Electronic communications

The draft legislation seems to be heading towards paper based reporting. (Refer to '*Members can also request paper based statements instead of electronic notification*' point #7 under summary of new law -EM).

The cost of having to mail 6 monthly statements by paper seems contradictory to the overall objective of reducing costs and creating efficiencies

Instead, providers should also have an addition option which leverages existing mandatory disclosures such as Annual Statements and PDSs as part of the welcome pack to refer members to existing fund website that constitutes their personalised online account which contains secured information about transactions such as employer contributions relevant to them.

This should remove the need to send two half yearly statements actually showing the contributions and components which significant lags the time when actual contributions were made.

Annual statements and other disclosures that promote online access of up to date information about transactions such as employer contributions relating to the relevant member through web based mechanism should suffice:

- to minimise costs;
- encourage greater member engagement by encouraging funds to promote web based tools; and
- meet the policy objectives of delivering up to date data in the form of payslips and online updates that minimises time lags for the purpose of up to date reconciliation.

Where electronic details are not available, providers should be permitted to send a letter saying whether contributions have been received or not and refer to the existing fund website.

There should not be a requirement to send another statement actually showing the contributions and components. Without this change, this measure will increase costs for most funds, where the current process is to provide web-based transaction statements for all members and to create and issue a single annual statement.

4. Paper statements - clarification

Where a member of an on-line product opts for a paper statement the assumption is they would receive a 6 monthly statement? (Obviously as stated before our preference would be not to produce the statement if they are in a product with on-line facilities.)

5. Use of generic language

(Reference *'If they choose to report quarterly, they must send a message by email (or, if email is not possible, by SMS message) to the member'* point # 6 of EM), we would prefer generic / non-technology specific language be used – such as electronic communication rather than email or SMS – this will provide legislation which is technology neutral and therefore enduring in meaning.

6. 'Risk only' funds

These are super accounts which are set up solely for holding an insurance policy. Premiums are typically paid annually, members can elect to pay the premium in a number of ways (e.g. employer initiated contribution, personal after-tax contribution, partial rollover) but it is likely that very few if any contribution would be mandated SGC (and these funds would not be employer defaults).

Logistically, the value of the contribution must match the value of the annual premium and members can't contribute throughout the year so that they have accumulated sufficient balances to pay the annual premium. This further marginalises the ability for members to use SGC to fund these premiums.

Accordingly, the measure should exclude superannuation products that do not have an investment component (also known as risk-only superannuation products). This suggested amendment incorporates the definition for risk-only superannuation interest that is consistent with other parts of the Corporations Act (e.g. see the recent shorter PDS regime as per r7.9.11K(2)(c) of the Corporations Regulations).

7. Pension accounts

It should also not be necessary to report in relation to pension accounts. Once established, they cannot accept further contributions or rollovers.