

16 April 2012

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The Treasury
Langton Crescent
PARKES ACT 2600

Dear Manager

RE: Exposure Draft – Intra-fund consolidation of inactive superannuation interests

The FSC appreciates the opportunity to comment on the Exposure Draft (ED) – we support the principle of an efficient superannuation system where members have fewer duplicate accounts. Accordingly, our comments in this brief submission are largely of a technical nature.

General comments

The proposed definition of an “inactive superannuation interest” ensures that there is a measured, incremental approach to the introduction of account consolidation. This is critical given the second round of consolidation initiatives which are due to commence from 1 January 2014 (inter fund consolidation of superannuation accounts).

The second round of measures will be based on a \$1,000 threshold which the FSC strongly believes should not be ratcheted upward. The risk of member loss from both a superannuation and insurance perspective would be materially higher under an increased threshold.

The \$1,000 threshold will deliver a substantive reduction in multiple (sub \$1,000 accounts). FSC research released by the Minister in February 2012 indicates that a \$1,000 threshold would remove 25 per cent of all accounts from the superannuation system.

The new duty in 108A confirms the important role that a superannuation trustee has to act in the best interests of its members. It remains critical that a trustee has the ability to carefully evaluate any multiple accounts within a fund, and then only once they determine it would be in a member’s best interest, to automatically consolidate those accounts. We believe that proposed section 108A(1)(ii) provides trustees with the discretion needed, we would support any strengthening of the ability of trustees to protect the interests of its members.

Insurance implications of inter fund consolidation of superannuation accounts

The FSC research released by the Minister identified at least 1.3 million inactive accounts (based on retail fund data only) with a balance below the \$1000 threshold had associated insurance benefits. It is likely that this number is significantly higher when all fund types are taken into account. In these instances, where the member fails to ‘opt-out’ of the automatic consolidation of their inactive account they will lose all existing insurance cover and associated benefits.

Further analysis undertaken by TAL Ltd projected that should the threshold increase, for

example to \$10,000, almost 5 million accounts with associated insurance benefits will be impacted.¹

Consequently, the FSC submits that regardless of the threshold, it is necessary for the legislation to indemnify insurers and trustees against liability where individual member accounts are consolidated that result in the loss of insurance benefits that may be unavailable to the member in the future.

Consistency with existing provisions

Rather than “same rights and benefits” test, which may restrict a trustee merging an account with another, a better principle is the one used in the successor fund transfer provisions around having “equivalent rights and benefits”. This would allow the trustee flexibility to act in the members’ best interests and be consistent with existing provisions.

Inability to merge into active account

The EM example points to an inactive account merging with an active account, but the way that the legislation is drafted only two inactive accounts can be merged together. We believe this inconsistency between the draft Bill and the draft EM needs to be addressed.

The EM contains an example 3.1 in paragraph 3.26 that suggests that there can be consolidation between inactive to active accounts. However, under the Bill, s108A as currently drafted requires that the procedure that must be put in place is for the consolidation of two or more **inactive accounts** with one of those inactive accounts, being the account that to which the most recent contribution, rollover or transfer was made.

The fact that the account may have had the most recent contribution does not make it active (note that for an inactive account the last contribution has to have been more than two years ago) and the draft Bill only applies if it is in fact an inactive account.

S108A(1)(b)(i) states that the rules must be for the consolidation of “those accounts”. The reference to “those accounts” has to be a reference to accounts each of which is an inactive superannuation interest as referred to in s108A(1)(a). This requires that each such interest must be:

- a. a superannuation interest (note this includes ADF interests) in the fund (other than a DB interest, income stream or other carve outs as may be set out in the regulations yet to be made);
- b. where the withdrawal benefit is less than \$1000; and
- c. where there have been no contributions, rollovers or transfer in the past 2 years or the member is lost member or the interests are in an ERF.

After the MySuper provisions commence, if there is an inactive account that is a MySuper account, then the consolidation must be to that account. It is clear from the current drafting that each of the accounts must be inactive if it is to be consolidated.

We seek clarification in the final Bill that the target account destination will be an “active” account.

¹ TAL Research Paper, Life insurance and auto-consolidation – risk versus return.

Technical comments

We would like to seek greater clarity in the EM on the extent to which a trustee has the power to assess whether accounts can be consolidated, e.g. fund level, product level, sub-plan level. Our position is that it would always be trustee discretion to establish whether it is appropriate to offer consolidation on equivalent accounts. This may include assessment of insurance offering, investment options etc.

The amendments to Subsection 10(1) of the SIS Act to include a definition of 'inactive superannuation interest' refers to an 'an interest in a superannuation fund'. It seems reasonably apparent from the proposed new s108A that they actually mean "superannuation entity" which would include approved deposit funds. We therefore seek to amend the new definition of 'inactive superannuation interest' to refer to superannuation entities rather than superannuation funds.

There is a requirement for no fees to apply to the transaction on consolidation – we seek clarification that transactional costs will be permitted.

We further seek to clarify our assumption on timing: that superannuation funds have until 30 June 2013 to implement the first transactions.

We look forward to discussing this matter further. I can be contacted on 02 9299 3022.

Regards



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