

Andrew Hunt
Retirement Benefits Unit
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

13 July 2017

Subject: Exposure Draft Legislation – **Reversionary transition to retirement income streams**

Dear Andrew

Thank you for the opportunity to comment on the exposure draft legislation to ensure that a reversionary Transition to Retirement Income Stream (TRIS) will always be allowed to automatically transfer to eligible dependants upon the death of the primary recipient.

Mercer strongly supports the direction of the proposed changes, which will provide much better member outcomes and also (subject to our comments below) avoid the administrative difficulties with the operation of the provisions as they currently stand.

There is one potential issue we wish to raise for your consideration. In the situation where the TRIS holder has not yet satisfied a relevant condition of release when they die, the TRIS up to that point will not be a retirement phase pension and therefore will not be eligible for ECPI (exempt current pension income). However following the proposed amendments, the reversionary pension will become eligible for ECPI from the *date of death*.

In practice applying ECPI from date of death is not possible to administer for large funds with unitised accounts and/or segregated assets for the following reasons:

- a) The trustee will not be notified of death until some time after death
- b) The trustee will then need to establish whether or not the reversionary nomination is valid
- c) If the reversionary nomination is valid, only then can the trustee establish the reversionary TRIS pension in the beneficiary's name and commence payments.

As a result there will usually be a period of weeks or months between the date of death and when the trustee has established that the reversionary pension is permitted. So to apply ECPI from the date of death would require a **retrospective** adjustment of the tax treatment of the account. For most large funds this is not administratively possible as their member record and unit registry systems do not allow backdating of purchases and sales of unitholdings i.e. the conversion of the member account from taxed unit holdings to untaxed unitholdings cannot be applied retrospectively.

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So, in practice in this situation, we expect that funds will apply ECPI (prospectively only) from the earliest feasible date from an administrative viewpoint, being the date the trustee was satisfied that the reversionary nomination was valid and the TRIS could continue as a reversionary pension. (Funds taking this approach would of course need to disclose this to members.)

We do not see any legislative impediment to this approach. Firstly, we do not believe there is any obligation under tax law for a fund to claim the maximum permitted ECPI – indeed, funds using the segregated assets approach to claim ECPI will be unable to move assets backing the TRIS into segregated pension assets until the trustee is satisfied that the reversionary nomination is valid, and so could not claim ECPI earlier. Secondly, as far as we are aware, the tax law does not place any constraints on how the tax payable by a fund is recouped from members' accounts.

However, if Treasury (or the ATO) considers there would be a legislative impediment to this approach, we request that the proposed amendment be modified to specifically provide the option for funds to apply ECPI from the time the trustee is satisfied that the reversionary nomination is valid.

This would be consistent with the existing section 307-80(3)(b)(ii) provision to the effect that the TRIS of a member who has satisfied a relevant pre-age 65 condition of release is not in retirement phase **until the TRIS holder has notified their fund of that fact**. This condition was included to avoid the same sort of potential situation referred to above whereby retrospective application of ECPI might be indicated.

In respect of the amount to count against the reversionary beneficiary's transfer balance cap, a requirement to determine this as the balance at the date of death can be administered, but it would be more efficient if this could be determined as the balance at the date the TRIS is converted to an untaxed pension – which for many funds will be the date the trustee is satisfied that the reversionary nomination is valid (for the reasons explained above). The 12 months deferral period before the balance counts against the reversionary beneficiary's transfer balance cap could still apply from date of death.

Please contact me on 03 9623 5464 or by email if you would like to discuss this submission.

Yours sincerely



Dr David Knox
Senior Partner