

7 August 2012

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### **Submission on tax relief for merging superannuation funds**

Professional Financial Solutions (PFS) is pleased to provide this submission on the exposure draft Bill to provide income tax relief for merging superannuation funds and its associated Explanatory Memorandum.

We are concerned that the draft Bill does not adequately address the situation of sub-funds of multi-employer funds, which are typically operated for employees of a single employer and its associated companies. This submission specifically addresses this aspect of the Bill.

### **About PFS**

Professional Financial Solutions (PFS) is an independent consultancy established in 2001. We provide specialist advice in areas including strategy, governance, compliance and licensing, risk management, financial modelling, group insurance, actuarial matters and employee benefits.

Our clients include superannuation funds, employers in relation to their employees' superannuation and benefits, AFS licensees, general insurers, life insurers and re-insurers, government agencies, credit unions, professional associations and industry bodies.

PFS is a member of Abelica Global, an international network of professional consulting actuaries, giving our clients access to an extensive knowledge base and international resources.

### **About corporate superannuation funds**

Over recent years, many corporate (or employer) funds have converted from stand-alone funds to sub-funds of larger multi-employer funds such as retail master trusts or industry funds. This is typically done by a successor fund transfer whereby all members are transferred automatically without requiring individual member consent, as members will receive equivalent benefits within the new fund while obtaining additional economies of scale. Within a multi-employer fund, members of the sub-funds continue to receive tailored benefits and fees which are different from other members of the multi-employer fund and equivalent to their original fund. Corporate funds often have additional employer subsidies and can be very efficient and attractive to members.

The draft Stronger Super legislation will allow similar structures to continue, either as choice products, tailored MySuper products for large employers, or (with some restrictions) within standard MySuper products.

## Transition to MySuper

There are a number of reasons existing corporate sub-funds might transfer to a different fund during the implementation of the Stronger Super reforms. For example,

- to obtain lower fees;
- to obtain better conditions; or
- because the trustee of their current fund is no longer willing or permitted to maintain their corporate sub-fund as a MySuper product following the Stronger Super reforms.

## Proposed CGT rollover relief

As the Bill is currently drafted, the CGT rollover relief will not be available for corporate superannuation funds transferring from one multi-employer fund to another, although it would be for corporate superannuation funds transferring from a stand-alone superannuation fund to a multi-employer fund or another stand-alone fund.

This is inequitable and, we consider, inconsistent with the intention of the stronger super reforms.

The reason for this situation is that the Bill provides CGT rollover relief by extending the existing relief provided by Division 310 of the Income Tax Assessment Act 1997, subject to some amendments. These provisions include a specific requirement in sections 310-10(3), 310-15(3) and 310-20(3) that the original fund ceases to have any members. This condition will not be satisfied in the situation of a corporate sub-fund transferring out of a multi-employer fund.

***Recommendation: We strongly recommend that the Bill be amended so that CGT rollover relief applies to terminating sub-funds in the same way as for terminating superannuation funds.***

There are precedents in tax and superannuation legislation for treating sub-funds in the same way as superannuation funds. For example, this occurs in section 69A of the Superannuation Industry (Supervision) Act, Superannuation Industry (Supervision) Regulations 5.16, 9.04B and 9.04G, and Income Tax Assessment Regulation 292-170.01.

### *Example*

A stand-alone corporate superannuation fund, the *Example Superannuation Fund*, was set up to provide benefits to employees of *Example Pty Limited*. A number of years ago, members and assets were transferred under a successor fund arrangement to a new sub-fund of the multi-employer fund, *Big Super*. This involved setting up a new division under *Big Super*'s trust deed to provide benefits for employees of *Example Pty Limited* matching the stand-alone fund, which was then wound up. Members now receive their benefits from the *Example Super Fund*, a sub-fund of *Big Super*. If this transfer had happened in 2012, it would have been eligible for the proposed CGT rollover relief.

As a result of the Stronger Super reforms, it is no longer appropriate for the *Example Super Fund* to remain part of *Big Super*, and it is decided to move this corporate fund to be a sub-fund of another multi-employer fund, *Large Super*. This would result in members receiving equivalent benefits, but now provided by the *Example Super Fund*, a sub-fund of *Large Super*.

Under the draft Bill, such a transfer would **not** be eligible for CGT rollover relief as it is only a sub-fund of *Big Super* that will cease to have any members. *Big Super* itself would continue to have members, thereby failing the test described above.

This is neither equitable, nor consistent with the intention of the stronger super reforms, as it will force members to bear either the loss of deferred tax assets or an immediate tax impost from crystallising capital gains, depending on the situation of the fund.

If you have any questions in relation to this submission, please do not hesitate to contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read "D Abrahams", with several horizontal lines underneath it.

Derek Abrahams  
Consultant