

# CORPORATE SUPER ASSOCIATION

The Manager  
International, Voluntary Saving and Special Rules Unit  
Superannuation, Retirement and Savings Division  
The Treasury  
Langton Crescent  
CANBERRA ACT 2600

16 January 2004

Dear Sir

## **TAXATION OF OVERSEAS SUPERANNUATION TRANSFERS**

I refer to the request from Mr Nigel Murray dated 8 December 2003 for comment on issues raised in the consultation paper attached to Mr Murray's letter.

The Corporate Superannuation Association would like to make the following comments.

### **Contribution income for the Australian Fund**

Some concerns have been expressed about potential systems issues with amounts which are taxable contributions but which are not subject to surcharge (it is agreed, however, that it would be highly inequitable to surcharge these amounts as they relate to earnings accumulations not to contributed amounts). It would be helpful for our members' systems if the legislation could treat these amounts as similarly as possible to "specified rollover amounts" under section 274(1)(a)(ii) of the ITAA 1936, which we understand are taxable contributions but are not surchargeable contributions under s 8 of the Superannuation Contributions Tax (Assessment and Collection) Act 1997.

### **Reporting transfers**

Comments from our members would support the reporting of transfers by a method similar to that currently used for RBL reporting.

### **Transfer process and communication with overseas funds**

We understand that transfers from overseas funds are complicated by factors which include the following.

### ***Information requirements for foreign regulators***

Transfers from U K funds, for example, have to be approved not only by the relevant fund but also by the UK Pension Schemes Office of the Inland Revenue, who require specific documentation from the transferee about their residency and employment situation, and about the transferee scheme. It would be useful if the ATO and foreign regulators could establish standard information requirements or at least provide each other with a package of information requirements for access by interested parties.

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### ***Composition of the transferred benefit: information for the transferee scheme***

When the transfer occurs, information provided by an overseas schemes about the benefits transferred may not be in the format which is helpful for an Australian scheme. Our funds require information about total benefit, service period and undeducted contributions. A standard protocol for information provision when transferring to a fund in a particular jurisdiction, would be helpful, but as the information is required is often driven by tax and/or benefit considerations, the format required may vary between jurisdictions. Again, communication between the Social Security and/or tax authorities in the separate jurisdictions could assist the supply of information in a helpful format. (Note: this is already emerging as an obstacle in the Family Law context, where it is hard to persuade an overseas scheme to complete a "Form 6" under the Family Law Regulations because the information requested is couched in unfamiliar terms).

### **Apportionment approach: periods of non-residency**

The apportionment approach in respect of period of non-residency seems practical. This is subject to some further comment below on the treatment of defined benefit increments arising from employer funding.

Our funds again commented that there could be some systems complexities associated with apportionment of transferred benefits but agreed that these were acceptable in the context.

### **Other matters not specifically canvassed in the Discussion Paper**

#### ***Period for concessional treatment of transfers and payments***

Our members would support the extension of the transition period during which most transfers can be made tax free, to two years. Our members report that typically, with all the issues that a person moving from overseas has to address, superannuation is not generally addressed until 6 months after moving. Experience, particularly with transfers from the UK, has been that it often takes 12 months for the transfer process to be completed. We accept that the 6 month period is a concession, but we believe that it is a concession which is not realistically available to the bulk of those individuals with superannuation to transfer. We urge that further consideration be given to extension of this period.

#### ***Transfer of defined benefits***

We remain concerned that the increase in benefit (excluding contributions) from the time of taking up Australian residency does not, in the case of defined benefit funds, represent amounts which are simply earnings. The increase in such cases will represent an increase in formula-based entitlements based on age, length of service and so on. There can be some massive tax bills arising from such increments which to a major degree arise from employer support and funding and in respect of which we would argue that some adjustment should be made on grounds that these increments are contribution equivalents. Contributions made to accumulation style accounts are excluded from taxable s 27CAA amounts.

A way of excluding similar amounts from defined benefit entitlements could be to restrict the amount taxable under section 27CAA to the actuarial estimate of long-term earnings rate for the fund (generally available from regular actuarial report and review of recommended contribution rates). We would be

grateful if consideration could be given to this approach or some similar approach resulting in the taxation of earnings accruals only in accordance with the intent of the legislation.

Yours faithfully

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Corporate Superannuation Association