

CORPORATE SUPER ASSOCIATION

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The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: cgt_super_rollover@treasury.gov.au

Dear Sir

EXPOSURE DRAFT – SUPERANNUATION FUNDS LOSS ROLL-OVER

The Corporate Superannuation Association appreciates the opportunity to comment on the above Exposure Draft legislation issued on 31 July 2009.

Our Association supports the move to assist merging funds to roll over or otherwise retain the benefit of realised and unrealised losses on their investments. We also appreciate the efforts that have been made to make the proposed legislation more flexible in respect of revenue losses and PST and life company investments.

We recognise that the extension of the relief to situations where PST and life company investments are held by merging funds or their successor funds is of great value in the modern context. It promotes a fair outcome where a fund has a large investment in a PST or life company and makes mergers in such situations possible, where previously there were significant economic barriers.

To further good economic outcomes for fund members and to assist business efficiency, we would like to see extension of the relief to the following situations:

- Where an employer sub-fund is to move from one master trust to another. This regularly happens where a merger or take-over of employer companies takes place and the merged employer group wishes to consolidate superannuation arrangements.
- Where a significant number of employees transfer from one employer and fund to another employer and fund, as a result of a sale or reorganisation of a business.
- When a fund wishes to change the supplier of investment services provided by way of PST or life company investment. To provide relief in these circumstances would promote healthy competition amongst pooled investment providers and should drive down costs for fund members.

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- In addition, we would like to see some flexibility in relation to the requirements that all members and assets must be transferred out by the completion date. This would assist in situations where a fund awaits an insurance settlement for one or more members before it can be wound up (or a section of the fund can be deemed to be closed).

Master trust investments

In a typical situation, Employer A at some time in the past has moved its corporate fund into Master Trust X operated by Provider X. Corporate Fund A remains an identifiable sub-fund of Master Trust X. Employer A has recently been taken over by Employer Group B. Master Trust Z is the default fund for employees of Employer Group B and the large majority of B's employees are members of Z (apart from the Employer A employees). Employer Group B would like to simplify and rationalise its superannuation arrangements by moving Employer A members into Master Trust Z and making Z the default fund for Employer A members. However, under current law, losses in Master Trust X attributable to Corporate Sub-Fund A would not be transferable to Master Trust Z, because Master Trust X has not ceased to exist. This restriction means that Employer Group B cannot rationalise its superannuation arrangements until fund performance improves to the point where the members and assets can be transferred without undue loss of losses. We note that this may take a number of years because the realised prior year losses will take some extra time to be used up.

Proposed solution

- Permit loss relief analogous to the loss relief for merging funds with PST investments.
- Extend the relief to situations where an identifiable sub-fund ceases to be part of a complying superannuation fund, and/or where all employees of a specified employer cease to be members.

Company joint ventures, spin offs and other re-organisations

A significant number of employees may transfer from one employer and fund to another employer and fund as a result of a sale or reorganisation of a business. The original employer's fund may however remain open because substantial numbers of employees remain with the original employer or group. This can occur in the context of the sale of an entire business but may also happen when there is a company spin-off or a joint venture between two companies. Particularly where employees from more than one employer come together in a new enterprise, it may well be appropriate to make separate and consistent superannuation arrangements for all the employees in the context of new employment arrangements.

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It would promote efficiency in business and equity for employees if loss relief were available in the above situations. A concept such as a bulk transfer of a sub-set of employees and associated assets might helpfully replace the currently proposed requirement that all members and assets be transferred out of the merging fund.

Change in PST and life company providers

Whilst the proposed relief would assist fund merger situations, there is no relief for a continuing fund whose trustees wish to change pooled investment providers.

For example, if Fund C invests solely (apart from minor cash deposits) in Major PST, but has decided to switch all its investment into Giant PST in order to take advantage of, say, a reduced cost profile or an increased range of investment streams in Giant, the currently proposed relief would not assist because Fund C will remain in existence – it will simply have changed its PST investment. Nevertheless, for Fund C, there is currently major potential detriment: this is because the exit unit price from Major PST will be depressed not only by current decline in asset values, but also by uncertainties in relation to future ability to utilise realised and unrealised losses in Major PST. This may be further exacerbated by bulk exit rules in Major PST: PSTs in the current climate, may further discount exit prices for bulk withdrawals, because of potential hazard to remaining unit holders that the deferred tax asset implicit in the unit price will become less likely to be crystallised if large calls are made at an early point on fund assets.

As indicated above, extension of relief to a situation where a fund wishes to transfer its entire investment between PST and/or life companies would avoid loss to superannuation fund members. It would also assist competition, and thus help to drive down costs ultimately borne by members. We suggest that relief might usefully be extended to a situation where a fund holds all its investments apart from cash in a PST or life company investment and wishes to move to another pooled investment provider.

Funds awaiting insurance payments

In a situation where a fund is awaiting settlement of an insurance claim on behalf of one or more members, it may be impossible to meet the requirement for all members to transfer out by the completion date. We would welcome an exception to the proposed rules to accommodate such situations.

Conclusion

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We believe that rationalisation of superannuation arrangements, and cost savings for members and employers could be further promoted by the extension of relief to situations outlined above. Please contact me if you would like to discuss this further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Bruce McBain', written in a cursive style.

Bruce McBain
Chief Executive Officer
Corporate Superannuation Association