

# CORPORATE SUPER ASSOCIATION

12 February 2009

General Manager  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

By e-mail to [cgt\\_super\\_roll-over@treasury.gov.au](mailto:cgt_super_roll-over@treasury.gov.au)

## **Submission: Optional CGT roll over for complying superannuation funds with capital losses**

Dear Sir

I refer to the Consultation Paper (“the Paper”), *Optional Capital Gains Tax roll over for complying superannuation funds with capital losses*, issued by Treasury in January 2009. The Corporate Superannuation Association welcomes the opportunity to provide comments.

### **1 Background: the Corporate Superannuation Association**

Established in 1997, the Association is the representative body of large corporate superannuation funds and their employer-sponsors. The Association represents a total of 39 funds controlling 50% of the corporate fund sector’s total assets. A significant proportion of the funds represented have defined benefit plans. The funds are most of the largest funds in the corporate fund sector. In general, the funds are sponsored by corporate employer sponsors with membership restricted to employees from the same holding company group, but we also include in our membership a few multi-employer funds with similar employer involvement and focus to our stand alone member funds.

The Association provides the following comments in relation to the Paper and the proposals.

### **2 Comments on the proposals in the Paper**

#### ***2.1 General comment***

The Association welcomes moves to alleviate the difficulties faced by funds that are forced by circumstances, or find it in the best interests of members, to merge into another fund. We appreciate the Government’s acceptance that there will, in a number of cases, be loss of significant deferred tax assets in the current circumstances of significant unrealised losses.

**CORPORATE SUPERANNUATION ASSOCIATION Inc. ABN 467 615 800 25**  
**Level 6, Suite 6, 470 Collins Street, Melbourne, Victoria 3000, Australia**  
**Telephone: 03 9620 5155 Fax: 03 9620 5122 Email: [corsuper@netspace.net.au](mailto:corsuper@netspace.net.au)**

# CORPORATE SUPER ASSOCIATION

Whether the deferred tax assets arising from the unrealised losses are recognised or not, the low cost base at which, under current law, the transferee fund would acquire the assets at the time when the transferring and terminating fund merges into the transferee/continuing fund will ultimately result in a higher gain arising on eventual disposal of the asset than would have resulted had the asset been transferred under “normal” pricing conditions.

## **2.2 Specific issues**

The Association would like to raise the following detailed issues relating to the proposals presented in the Paper.

### **2.2.1 Duration of proposed relief**

We note that the proposed time horizon for the relief (to 30 June 2010) is short, and despite the fact that the issue is likely to be considered under the broader tax review currently in progress, we suggest that a period of 3 years rather than 18 months will allow time for any longer term remedies to flow through.

### **2.2.2 Deferral of losses and gains**

We understand that the proposal in the Paper (section 4) would generally be for losses, incurred by a merging fund that ceased to exist, to be ignored until such time as the asset transferred is disposed of by the transferee fund (or another CGT event occurs). However, it is proposed that as a default position, any gains arising in the merger circumstances would be recognised for CGT purposes at the time of the merger. As an option for the merging fund, part of the losses could be recognised and not deferred, to the extent that the losses can be used to offset the realised gains.

Whilst we recognise that this proposal will be of significant assistance, we believe that the proposal involves complexity, when compared with the simpler approach under previous temporary CGT merger relief arrangements whereby the recognition of all losses and gains was deferred. To implement the proposal to tax gains and allow for optional offset of losses will inevitably result in increased complexity of calculations, giving rise to additional costs. In current market conditions, it seems that minor gains may arise on recently acquired assets, but that the majority of CGT events on merger will result in losses. Hence, the proposal does not appear likely to have an impact on revenue (given that funds are likely to use losses to absorb the gains, and the losses are currently likely to exceed gains). The only apparent effect would be to minimise the amount of losses rolled over. Given the very small amount of gains likely to have emerged, we would argue that there is little gained and a significant cost in complexity arising from this aspect of the proposal.

We would prefer to see a simple roll over approach adopted whereby the transferee fund adopts the merging fund’s cost base for all transferred assets.

# CORPORATE SUPER ASSOCIATION

## 2.2.3 Cost base adjustment

We note that at 4.1.1 and 4.2.1 of the Paper, it is proposed to restrict the amount of transferred CGT cost base on assets that have been used to support current pensions in the transferring fund. To the extent that assets were used as exempt assets, the cost base carried forward to the transferee fund would be adjusted to reflect the unrealised capital losses on the exempt assets at transfer time.

We see two difficulties with this proposal.

The first reason is the distortion in the asset's cost base arising from the depressed conditions at the time of merger. If the adjustment is done as at the transfer time, when given likely market conditions the asset price is likely to be depressed, the transferee fund will end up with a larger cost base reduction than is reasonable because of the asset price being depressed. Given that the policy approach of the proposed relief is to try to mitigate detriment arising from unfortunate timing, we urge that this aspect be reconsidered.

The second difficulty is the impact on fund tax accounting systems. The proposal involves complex adjustments to the cost base of assets and will involve merging funds in significant additional costs at a time when these can least be afforded.

The cost base reduction proposal for exempt assets was not a feature of previous merger CGT relief. We understand the concern that there was a tax benefit in these assets till merger time and that if the assets subsequently become non-exempt the CGT exempt status for part of the time should be reflected and adjusted for. Nevertheless, as noted above, we are seriously concerned by:

- the timing of the proposed cost base adjustment, which we believe will result in cost base distortion which will impact unfavourably on fund members, and by
- the costs of implementation. In a climate where there is a need to provide relief, we are concerned by proposed increases in costs and complexity.

If the Government is committed to ensuring that the exemption of the asset's income and gains during the period when it was a current pension asset is reflected in a cost base adjustment, we would prefer to see an adjustment made on a time apportionment basis at the time of a subsequent CGT event in relation to the asset. Alternatively, the transferee fund may prefer to account for any full capital gain on the asset at time of eventual disposal (if no longer held as an exempt asset). On the other hand, given the difficult conditions currently being experienced by superannuation funds, the retention of the full original cost base could be considered to be a reasonable tax concession at a time when Government appears willing to provide relief to many taxpayer groups.

# CORPORATE SUPER ASSOCIATION

Please contact the Association's office by phone on +61 3 9620 5155 or by e-mail to [corsuper@netspace.net.au](mailto:corsuper@netspace.net.au) if you would like to discuss the above.

Yours sincerely

A handwritten signature in cursive script that reads "Elizabeth Hodder".

Research Officer  
Corporate Superannuation Association