

CORPORATE SUPER ASSOCIATION

ABN 97 799 893 065

Suite 2, Level 6, 454 Collins Street,
Melbourne, VIC 3000
Tel: 03 9602 1135
Email: corpsuper@netspace.net.au
Website: www.corsuper.com.au

9 November 2010

The Hon Bill Shorten
Assistant Treasurer and Minister for Financial Services and Superannuation
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Email: via web site online form

Dear Mr Shorten

SUPERANNUATION FUNDS CAPITAL GAINS TAX RELIEF ON MERGERS

We are writing to you regarding the capital gains tax relief that it is currently provided when superannuation funds merge. This relief ceases from 30 June 2011. We believe that the conditions that gave rise to the need for the loss relief have not come to an end. Furthermore, we believe that it is in the interests of Government and the public that the relief should be extended in time and in scope.

Background – Corporate Superannuation Association

Established in 1997, the Association is the representative body for large corporate superannuation funds and their employer-sponsors. The Association represents a total of 46 funds controlling 39 billion dollars of member funds. In general, these 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. A number of our funds have defined benefit divisions, and these, whilst providing particular advantages to fund members, also give rise to distinct issues when any new measures are planned.

Our funds typically are established without shareholder interests in the governing body, and no profit is derived from the operations of our funds. The funds are run as mutual entities, where the decisions are the responsibility of a trustee board. The board typically provides equal representation for employer and employee interests. There is a high level of trustee integrity and an alignment of the interests of the trustee with those of the members.

CORPORATE SUPER ASSOCIATION

Superannuation fund mergers and CGT consequences

Over many years there has been recognition that when superannuation funds merge, there can be adverse consequences from premature realisation of assets for CGT purposes. These arise broadly because the trustee of the merging fund, which ceases to exist, realises the fund's CGT gains and losses at the point of the merger, which is generally a point of time earlier than the gains would otherwise have become taxable. A further adverse effect is the future unavailability of realised losses which would otherwise have been offset against future gains, but which disappear when the taxpayer fund ceases to exist on merger. These circumstances directly reduce the pool of assets available for the members of the merging fund.

In recognition of these issues, at times when significant merger activity has been anticipated, the Government of the time has generally made relief available. For example, when APRA licensing of trustees was introduced, and significant rationalisation was anticipated, temporary rollover relief was made available from 1 July 2004 to 30 June 2006.

We believe that because of the continuing rationalisation activity taking place in the superannuation industry, relief of this nature should be extended significantly beyond 30 June 2011. The mergers that are currently occurring (many of which will not be complete by 30 June 2011) are numerous and some involve very large funds. The absence of relief will prejudice large numbers of members, reducing their account balances by proportionate shares of tax burdens in relation to assets that have not in fact been realised, other than technically as a result of transfer to a different trustee.

CGT loss relief for funds that merge: 24 December 2008 to 30 June 2011

The relief currently available was introduced more specifically in response to adverse market conditions during the Global Financial Crisis. It was recognised that funds that merged during the extremely low market conditions would, on transfer of their assets to the transferee fund, realise significant losses. These losses would, in the absence of relief, never be recoverable. The cost base of the transferred assets would be artificially depressed for the transferee fund, hence fund members would suffer an additional tax burden on a gain of an inflated size. The circumstances giving rise to the relief were noted in your Press Release No 29 of 2010 (25 March 2010). The relief is specifically directed towards permitting trustees of the transferee funds to preserve the losses from the merging fund.

Current conditions and future expectations

At the time when the sunset date was set for the current relief, it was expected that world markets would recover by that date, and the need for the relief would be less pressing. In addition, when the measure was announced, it was anticipated that the taxation review then under way would provide future direction in respect of the taxation of superannuation funds, hence the relief should not anticipate this. The announcement of the relief contained the following statement

CORPORATE SUPER ASSOCIATION

“The Government will provide this limited CGT roll-over as a short-term measure. The Australia's Future Tax System Review is also considering the taxation of capital. The Government will reconsider this measure after receiving the Review Panel's final report.” (Press release Senator Nick Sherry, Minister for Superannuation and Corporate Law, 23 December 2008).

We urge you to consider the following:

There is continuing concern about the undervaluation of world equity markets at the current time, as well as potential volatility in bond markets (income losses on bonds and other assets are encompassed in the current relief). Hence, funds are not yet seeing a market that is settled or at full valuation, and the potential for realisation of abnormal losses on fund merger still exists.

Further, we believe that a form of long-term relief is required to reduce inequities for members of funds that merge. This would recognise that merger activity is a continuing and significant pattern, not anticipated at the time of the design of the income tax legislation as it originally applied to superannuation funds.

We believe that, even if emerging from the taxation system review, you anticipate a significant change in the taxation of capital realisation events in superannuation funds, this will take years to design and implement. Hence, an extension of the current relief would greatly assist superannuation funds and their members at the current time.

I should welcome an opportunity to discuss the above with you.

Yours sincerely



Bruce McBain
Chief Executive Officer
Corporate Superannuation Association