



## Australian Government

### The Treasury

## GREATER CERTAINTY FOR FUND MERGERS

### SUMMARY OF CONSULTATION PROCESS

On 14 December 2013, following consultations with the superannuation industry, the Government announced that it would proceed with a measure first announced by the previous Government.

The measure will remove uncertainty by clarifying that the proportioning rule, a tax integrity rule designed to prevent individuals from manipulating the taxable and tax-free components of their superannuation payouts, will not be triggered when superannuation benefits are rolled over to another fund as part of a merger between those superannuation funds. The measure addresses concerns that the application of the proportioning rule to rollovers could result in potential unintended tax disadvantage for some individuals.

This measure was included in Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014, which was introduced into Parliament on 4 December 2014.

#### **Consultation process**

Public consultations on the exposure draft legislation and explanatory memorandum opened on 23 September 2014 and closed on 20 October 2014. Submissions were received including from key industry peak bodies including the Financial Services Council, the Association of Superannuation Funds of Australia, the Tax Institute, the Law Council, and the Australian Institute of Superannuation Trustees. Submissions were generally supportive of the measure.

#### **Summary of key issues**

##### *Intra-fund transactions*

A number of stakeholders noted that it may be possible for some intra-fund transactions including internal transfers in relation to the former Government's *MySuper* changes to be deemed as benefit payments and therefore trigger the proportioning rule. They suggested that the measure should be broadened to address these scenarios.

The Government has not adopted this suggestion. The submissions did not provide sufficient evidence that this is an impediment to internal transactions. It is also noted that this issue was not raised during the Australian Taxation Office (ATO)'s stakeholder consultations during the past three years since the measure was first announced. It is also anticipated that a legislative response to this issue would increase the complexity of the legislation.

### *Inter-fund transactions*

A number of stakeholders noted that there are inter-fund transactions other than fund mergers which may also trigger the proportioning rule – for example, transfers of superannuation benefits as a result of a direction by regulators – and that legislation should clarify that such transactions also do not trigger the rule

The Government has decided to not adopt this suggestion. The submissions do not demonstrate that this is a significant issue for the wider superannuation industry. It is also anticipated that a legislative response to this issue would increase the complexity of the legislation.

### *Starting date*

A number of stakeholders argued that the measure should start earlier than 1 July 2015.

The ATO has stated that the proportioning rule will not apply to transactions which have occurred before 1 July 2015.

As a result the Government decided not to adopt this suggestion.

Retrospective application would also increase compliance costs for superannuation funds which had previously responded to the uncertainty by applying the proportioning rule; a retrospective measure would require such funds to go back and make adjustments to historical transactions. Trustees could also be liable to compensate individuals for any additional tax paid because of the loss of a tax free benefit component in these cases.

### **Feedback**

Feedback on the consultation process for this measure can be forwarded to [consultation@treasury.gov.au](mailto:consultation@treasury.gov.au) . Alternatively, you can contact Brant Pridmore on (02) 6263 4336.

Thank you to all participants in the consultation process.