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3 May 2013

Subject: Income tax relief to facilitate the Government's MySuper reforms

Dear Sir

Thank you for the opportunity to comment on the Tax Laws Amendment (2013 Miscellaneous Measures No. 1) Bill 2013: MySuper loss transfer and asset roll-over.

Mercer supports relief being provided in relation to the mandatory transfer of accrued default amounts (ADAs). However we have a number of comments on the Bill:

Rollover of tax losses

Where only a part of a fund's membership is being transferred (i.e. the usual case), there is likely to be a range of complexities and hence the potential for disputes with the ATO over the methodology for determining the amounts which are "reasonably attributable" to the ADA transfer.

Recommendation: It will be necessary for the ATO to provide sensible and practical guidance as well as adopting a reasonable approach.

Personal deductible contributions

Although we support the concept of allowing a member to lodge a notice of intent to claim a tax deduction, we consider this is unworkable based on the Bill in its current form and the methodology specified in Tax Ruling TR 2010/1. The receiving fund is unlikely to have all of

the relevant information to determine whether the notice is valid. In particular it will need details of:

- Personal contributions made in the current financial year and the date made
- Personal contribution made in the previous financial year and the date made
- Details of any previous “intent to claim” notices for the current and previous year
- Details of any partial withdrawals or rollovers in the current and previous year

Without this information, the receiving fund would be unable to proceed. The problem could be significantly reduced if the ATO were to adopt a more practical approach to determining the maximum allowable deductible contribution in cases where there has been a partial rollover or withdrawal since the contribution was paid (The ATO Ruling effectively assumes a pro-rata portion of the contribution is included in each rollover/withdrawal and hence is no longer held by the fund. A more practical approach would be to adopt a last in – last out approach whereby any withdrawals would be deemed to have first come from earlier contributions.)

Funds expecting to receive “intent to claim a deduction” forms may need to take into account these concerns and potentially defer any transfer of ADAs to much closer to 1 July 2017.

In some cases, members intending to lodge a notice of intention to claim a deduction may prefer to remain in their current fund (i.e opt out of the propose transfer) so that their deduction can be properly handled. However, a flaw in the definition of accrued default amount appears to result in their account balance continuing to be treated as an accrued default amount – even if they do not want their account transferred to another fund.

Recommendations:

TR 2010/1 needs to be amended in relation to the methodology relating to the contributions which can be claimed as a tax deduction.

The definition of accrued default amount needs to be amended to exclude amounts where the member has directed the trustee, in writing, not to transfer the amount to a MySuper product (whether in their current fund or in another fund).

Contribution splitting

The Bill makes no provision to allow contribution splitting where a member’s benefits have been transferred to another fund. Although theoretically, a member could provide a contribution split notice to the trustee of the original fund before the transfer occurs this adds further complications and many members are unlikely to realise the need to request the split before the transfer rather than in the following year. On the other hand, the trustee of the

receiving fund may not have sufficient information on which to determine the amount which could be split. We note contribution splitting is relatively rare and hence it would not be appropriate to design a relief system around it. However the following recommendation would provide some flexibility:

Recommendation: Although not ideal, amending the definition of accrued default amount as outlined above would allow those members who intend splitting contributions to remain in the current fund until the split has occurred.

Explanatory Memorandum

We are concerned with the wording in the following paragraphs in the Explanatory Memorandum as the words are likely to mislead:

Paragraphs 1.12 and 1.17: These paragraphs imply the gains and losses are deferred in the original fund whereas the deferral actually occurs in the receiving fund.

Paragraph 1.23: The first dot point implies a fund can offer a Tailored MySuper without a generic MySuper. We do not believe this is possible. Any examples given need to be realistic.

Paragraph 1.57: This paragraph indicates the transfer of accrued default amounts will not be a successor fund transfer. This will not always be the case.

If you have any queries or would like further clarification, please do not hesitate to contact us.

Yours sincerely,



Dr David Knox
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