THE TAX INSTITUTE

12 June 2012

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

By email: cgt_super_roll-over@treasury.gov.au

Dear Ms Barron

TAXATION RELIEF TO SUPPORT THE IMPLEMENTATION OF STRONGER SUPER

The Tax Institute is supportive of and welcomes the Government's announcement and Treasury's Proposals Paper in respect of taxation relief to ensure:

- tax considerations are not an impediment to superannuation funds seeking to merge and consolidate in response to the Stronger Super reforms; and
- that default members of superannuation funds are not adversely affected if their superannuation benefits and relevant assets are transferred under the MySuper reforms.

This announcement is in our view a welcome recognition of the adverse tax consequences to superannuation funds and members alike of the significant merger activity that is likely to result from the MySuper reforms.

Nevertheless, it is our view that the proposed relief, though a step in the right direction, is unnecessarily narrow to fully achieve its stated objectives. Specifically, we strongly recommend that rather than lapsing on 30 June 2017, relief of this nature should be provided in perpetuity in consideration of the unique circumstances and relationship between superannuation fund trustees and members.

Specifically, we make the following comments on Treasury's proposals paper dated May 2012 with respect to the implementation and design details of the proposed taxation relief:

1. It is our view that whilst there is a natural connection between the final date for relief (30 June 2017) and the proposed date by which the compulsory transfer of default balances for MySuper purposes must be completed, there is likely to be merger activity within the industry that continues well beyond 30 June 2017. This is because the Stronger Super measures will require trustees of funds with a

MySuper authorisation to annually test the scale of their fund and its ongoing viability which may cause fund mergers to occur well beyond 30 June 2017. As a result, we strongly recommend that the relief not be temporary and cease at 30 June 2017. We note that such relief has been made available in previous sets of amendments as a consequence of Australian Prudential Regulation Authority ("**APRA**") licensing requirements and the impacts of the global financial crisis. This latest form of relief demonstrates the need for ongoing flexibility in the superannuation industry, rather than the current piecemeal approach which gives rise to uncertainty and distorts decision-making by trustees.

2. Given the nature of a member's interest in a superannuation scheme where it can be, in effect, transferred (without member consent) to another scheme as a part of a merger process, we consider that it is inappropriate that such a transfer should result in members thereby being disadvantaged by the loss of deferred tax assets which (without relief) do not transfer to the transferee fund.

   As far as the members are concerned, their interest is compulsorily transferred, and as such members should have an interest under the transferee fund that is substantially equivalent to the interest they had under the transferor fund without incurring adverse tax consequences. The transferor fund does not receive any consideration from the transferee fund in respect of such transfers (other than to the extent that the transferee fund assumes liabilities including with respect to the payment of members' benefits). In view of these matters, we consider that there is a good policy reason to provide perpetual relief in respect of fund mergers.

3. The merger relief should be expressed to extend to sub-plans (or sub-funds) within a master trust structure such that a plan within a master trust can be transferred to another master trust (or other fund) without adverse CGT consequences. In many situations it will be necessary for restructuring to occur within master funds or industry funds (with sub-plans) as a consequence of the Stronger Super changes. Often, the assets held in a sub-plan are quarantined and separately identifiable from other assets of the fund. We consider that CGT relief should be extended to transfers of the entire membership and assets of a sub-plan to ensure that there is adequate flexibility for this kind of restructuring that will also occur as a consequence of the Stronger Super measures.

4. We consider that the proposed relief should extend to mergers involving self managed superannuation funds ("**SMSFs**"). Reasons, including fund administration costs, could equally drive a SMSF to seek a merger with a larger fund. The same perpetual relief should be available to SMSFs in these circumstances as we consider there to be no valid policy reason for treating SMSFs in this manner, especially as Small APRA Funds also have fewer than 5 members. We consider that there should not be any differentiation regarding the taxation treatment of any type of superannuation fund that a member may lawfully choose to have their superannuation guarantee and other contributions paid.

5. We note the Government's 6 May 2012 announcement in respect of limited tax loss carry-back for companies and entities taxed like companies. The Tax Institute has been broadly supportive of that announcement and has acknowledged that the measure is a step in the right direction.

We also consider the principles underpinning that announcement to be relevant in the context of superannuation funds. Specifically, we consider that the transferee fund should also be allowed optional four-year “loss carry back” on transferred capital and revenue losses under the relief such that a transferor or transferee fund has flexibility for a loss to be recovered from taxes paid during prior years.

Superannuation funds are separate taxpaying entities, like companies are. Unlike many other trusts where beneficiaries are taxed, a loss carry back enabling a refund of tax to be paid to a superannuation fund would not create difficulties in identification of the taxpayer to whom the refund should be paid. Loss carry-back would not raise equity issues between members, because the value of the transferred loss would be attributed to the accounts of the transferring members at the time of the transfer. While we acknowledge that superannuation funds are different in certain significant respects from companies, a limited loss carry back would, to some extent, overcome the need to roll over losses in the context of fund mergers.

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If you would like to discuss this matter, please do not hesitate to contact me on 02 8223 0011 or The Tax Institute’s Tax Counsel, Deepti Paton, on 02 8223 0044.

Yours sincerely

Ken Schurgott

Ken Schurgott
President