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LOSS RELIEF FOR SUPERANNUATION FUNDS THAT MERGE

SUMMARY OF CONSULTATION PROCESS

The Government announced on 23 December 2008 that it would provide an optional capital gains tax (CGT) roll-over for capital losses arising from CGT events happening under a complying superannuation fund's merger with an APRA regulated superannuation fund with at least five members. Following public consultation on the policy design of this measure, the then Minister for Superannuation and Corporate Law announced further changes to expand the scope of this measure on 29 April 2009.

This measure was included in Tax Laws Amendment (2009 Measures No. 6) Bill 2009, which was introduced into Parliament on 25 November 2009.

Consultation process

Consultation on the policy design of this measure was conducted between 16 January 2009 and 13 February 2009. A total of 18 submissions were received.

Consultation on the draft legislation was conducted between 31 July 2009 and 28 August 2009. A total of 13 submissions were received on the exposure draft legislation, one of which was confidential.

At both stages of the consultation process key stakeholders were advised when the consultation commenced and were invited to make submissions. Submissions can be viewed by clicking on the following links: [Submissions on the discussion paper](#) and [Submissions on the exposure draft](#).

Summary of key issues

Issues raised in consultation on the policy design

The main issues raised in consultation on the policy design concerned the scope of the CGT roll-over and the timeframe for the operation of the roll-over. In response to the submissions on the discussion paper the Government announced that the period of application of the roll-over would be extended by one year to 30 June 2011 and that the measure would be expanded to:

- apply to mergers involving pooled superannuation trusts (PSTs) where the continuing entity has at least five members and to mergers involving the complying superannuation business of life insurance companies;
- permit superannuation entities in a net capital loss position to roll-over assets with both capital gains and capital losses realised on transfer under the merger, rather than just capital losses; and



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- permit previously realised net capital losses held in the transferring superannuation entity to be transferred to the continuing superannuation entity and the roll-over or transfer of any revenue losses to the continuing entity.

Issues raised in consultation on the draft legislation

A number of issues raised in the consultation on the exposure draft legislation were of a technical nature. These have been addressed in the current legislation. The requirement that assets transferred under the merger must be identical to those held by the transferring entity before the merger has been removed, the loss relief is available for wholly cash transfers and the relief is available where assets are transferred to more than one continuing entity.

The exceptions to the requirement for the transferring fund to have no assets and no members on completion of a merger have also been included to take account of circumstances that are outside the control of the trustee of the fund. In addition, the measure has been modified to provide the loss relief in circumstances where an arrangement for the merger of superannuation funds meets the conditions for relief but is implemented via the creation of a new entity.

A number of submissions recommended that the measure be extended to apply to mergers of fund investments where the funds continue to operate and partial mergers. These proposed changes were not adopted as they do not lead to consolidation of the industry.

Also, several other matters were raised that were outside the scope of the measure, including award modernisation issues, state and territory stamp duty concessions and transfer of CFC and FIF attribution accounts.

A number of submissions recommended the removal of the requirement in the exposure draft legislation that the transfers of members and assets occur in a single income year. The single income year requirement has been retained as it avoids substantial complexity of the law and administration that would be required to provide the roll-over for transfers that occur over more than one income year.

Discussions with industry representatives following the consultation indicated that those funds that have merged in anticipation of the measure have concluded the merger in a single income year, the 2008-09 income year. In addition, industry indicated that mergers generally take effect on a nominated date, which means that in practice it is not expected to be difficult for merger arrangements to satisfy the single income year requirement.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Nicholas Backhouse on 02 6263 3241.

Thank you to all participants in the consultation process.