11/10/2024

Tax and Transfers Branch
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email to **superannuation@treasury.gov.au**

Dear Treasury,

Legacy retirement product conversions and reserves – draft regulations

AustralianSuper welcomes the opportunity to provide a submission to the Government's consultation in relation to the Exposure Draft of the *Treasury Laws Amendment Instrument 2024: Self-managed superannuation funds—legacy retirement product conversions and reserves* and explanatory materials regarding the proposed amendments to the regulations that deal with transfers from reserves for superannuation funds.

AustralianSuper is Australia's largest superannuation fund[1] and is run only to benefit members. Over 3.4 million Australians are members of AustralianSuper, and we invest over $341 billion of their retirement savings on their behalf. Our purpose is to help members achieve their best financial position in retirement.

Our submission makes the following points:

- AustralianSuper is supportive of the Government's drafting of the legislative instrument for implementing the necessary changes required to allow individuals to exit legacy retirement products. In our view this is in line with the Government's announcement in the 2021-22 Federal Budget.
- The draft legislative instrument should be revised so there is a full exemption for transfers from Operational Risk Financial Reserves of large APRA-regulated funds.

The Government's proposal to introduce new regulations *Treasury Laws Amendment Instrument 2024: Self-managed superannuation funds—legacy retirement product conversions and reserves* (**Draft Regulations**), in its current form, will amend the current Income Tax Regulations (**Regulations**) relating to the tax treatment of amounts transferred from reserves allocated to members. The new proposed regulations outline that r. 291-25.01(3)-(5) of the Regulations are to be repealed, and new rr. 292-90.01(2A) and 292-90.02(2) (amongst other amendments) are to be introduced into the Regulations.

These new draft regulations mirror the current r. 291-25.01(4) of the Regulations. Therefore, it still stands that whilst potentially applicable to an Operational Risk Financial Reserve (**ORFR**) allocation, the proposed draft exception under new r. 292.90.02(2) will remain difficult for large APRA regulated funds to satisfy considering the requirements in paragraphs (a)(i) and (a)(ii). The use of the ORFR is limited by APRA *Prudential Standard SPS 114 Operational Risk Financial Requirement* to addressing member losses arising from operational risks that have materialised. The ORFR reserve relates to all fund members rather than a class of members; however, it will not

[1] APRA Quarterly superannuation fund level statistics, June 2024. Released 2 October 2024.

always be the case that the operational risk event affects all members of the fund, and therefore the allocation of the ORFR reserve will not be to every member.

The combined effect of the changes under the Draft Regulations is that money allocated from an ORFR for large APRA-regulated superannuation funds would count towards members' non-concessional contribution caps, rather than concessional caps as applies under the current Regulations.

While it may be expected that the number of members who utilise the non-concessional contributions cap is typically lower than the number who utilise the concessional contributions cap, any compensation/remediation program involving a large number of members would also likely have a cohort of members who are utilising the non-concessional contributions cap.

This situation may still present negative outcomes for members of large APRA-regulated funds, as exceeding a non-concessional contribution limit can lead to adverse tax outcomes for members who would need to pay tax on the amount in excess of this limit.

The Draft Regulations, as provided by the Explanatory Statement, are targeted integrity measures designed to provide 'fair outcomes while mitigating the risk of inter-generational wealth transfer within the self-managed superannuation fund system.' That is, these provisions are targeted towards the possible mischief that can otherwise arise for self-managed superannuation funds (**SMSFs**), which does not arise for large APRA-regulated superannuation funds.

We therefore consider a need to specifically exclude transfers from ORFRs of large APRA-regulated funds from the operation of the Draft Regulations, specifically the new draft rr. 292-90.01(2A) and 292-90.02(2). We suggest that Treasury provide an express exclusion for amounts allocated from ORFR by APRA-regulated superannuation funds in the Regulations, such that this type of allocation from a reserve to members' accounts does not count towards an individual's concessional or non-concessional contributions for a financial year.

Conclusion

Thank you again for the opportunity to provide a submission to this exposure draft legislation and draft explanatory materials. We would be pleased to discuss this, or any other matter raised in this submission with you further at your convenience.

If you have any questions or would like to arrange a discussion, please contact me or Richard Murphy, Manager, Government Relations and Public Policy at **rmurphy@australiansuper.com**.

Yours sincerely

Nick Coates
Head of Government Relations and Public Policy