

1 May 2017

Manager
Retirement Benefits Unit
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email - superannuation@treasury.gov.au

Dear Sir or Madam

Industry submission that the law be amended

This submission is made on behalf of the signatories listed below.

The purpose of this submission is to request that Treasury amend section 294-115 of the *Income Tax (Transitional Provisions) Act 1997 (ITTPA)* to ensure that a superannuation fund that is using the proportionate method at 9 November 2016 does not lose the ability to access the cost base reset if it begins to use the segregated method between 9 November 2016 and 30 June 2017.

The problem

Section 294-115 ITTPA allows eligible superannuation funds using the proportionate method to access the cost base reset CGT relief. One of the preconditions is that throughout the “pre-commencement period” the asset is not a segregated current pension asset of the fund (section 294-115(1)(d)).

In order to access the cost base reset for segregated assets, under section 294-110 ITTPA, an asset must be a segregated current pension asset of the fund at the start of the pre-commencement period.

What this means is that if a superannuation fund is using the proportionate approach at 9 November 2016 and moves to the segregated approach between 9 November 2016 and 30 June 2017 that the ability to access the cost base reset will be lost. This is because:

- The asset will not have been a segregated current pension asset of the fund at the start of the pre-commencement period and therefore the cost base reset is not available under section 294-110 ITTPA; and
- The asset will be a segregated current pension asset during the pre-commencement period and therefore the cost base reset is not available under section 294-115 ITTPA.

There are a number of circumstances where a superannuation fund may move from the proportionate method to the segregated method. Most of these involve a fund moving to 100% pension mode (retirement phase) and consequently that all of the assets of the fund become segregated current pension assets. Examples include:

- Where one member is in pension mode and another is in accumulation mode and the accumulation member (typically the member's spouse) commences a pension and the fund moves into 100% retirement phase;
- Where one member is in pension phase and another is in accumulation mode and the accumulation member rolls their benefits out of the fund (and consequently the fund is 100% in retirement phase);
- Where one member is in pension phase and another is in accumulation mode and the accumulation member takes their benefits out of the fund as a lump sum (and consequently the fund is 100% in retirement phase); and
- Where one member has a pension account and an accumulation account and that accumulation member either converts the accumulation account into a pension or that

accumulation account is rolled out of the fund or paid out as a lump sum. (and consequently, the fund is 100% in retirement phase).

Many of the above examples would have already been inadvertently triggered without the member's or fund's knowledge that the opportunity to access the cost base reset would be lost. Further, this technical defect is not widely understood so many more superannuation funds will make the same mistake.

No administrative solution

Industry has discussed with the Australian Taxation Office (**ATO**) as to whether this problem can be addressed through an administrative solution. The ATO has indicated that they are compelled to administer the law as currently drafted and that this is a matter for Treasury. Hence, this submission.

Submission

The problem highlighted above is clearly an unintended defect in the legislation.

It is submitted that if this problem is not rectified that this will cause many superannuation funds to inadvertently and unfairly miss out on the cost base reset. Such a result would be inconsistent with the policy intent of the cost base reset measure.

How to fix the problem

It is proposed that this issue be fixed as follows:

In section 294-115(1)(d) delete "throughout" and replace it with "at start of"

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If you have any questions in relation to this submission, please contact Phil Broderick on 03 9611 0163.

Yours Sincerely

SIGNATORIES

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