24 April 2024

Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Email: superannuation@treasury.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – TREASURY LAWS AMENDMENT INSTRUMENT 2024: SUCCESSOR FUND TRANSFERS AND CAPPED DEFINED BENEFIT INCOME STREAMS (EXPOSURE DRAFT)

The SMSF Association welcomes the opportunity to provide this submission in response to the Government's proposed amendments to the transfer balance credit provisions for successor fund transfers. We welcome these proposed amendments. These are urgently needed to address unintended consequences affecting individuals with capped defined benefit funds in the circumstances set out in the explanatory statement.

We are aware of a number of cases where impacted individuals have been required to commute excess amounts assessed from other superannuation interests. These scenarios typically involve a member who held a capped defined benefit interest in Fund A, which under the successor fund transfer rules was commuted and transferred to Fund B.

The member than commenced a new capped defined benefit pension in Fund B which resulted in an excess transfer balance account because the transfer balance account debit arising on the commutation of the pension in Fund A was less than the transfer balance account credit that arose for the new pension in Fund B. The member then received an excess transfer balance cap determination.

The member also has an account-based pension in a self managed superannuation fund (SMSF) and to comply with the determination, they commuted the excess transfer balance amount from their account-based pension by transferring this amount back to the accumulation phase in their SMSF.

The intention of these measures is to reinstate the taxpayer, as much as is possible, to their original position. As a consequence of these amendments, we seek clarification that:

1. The taxation levied and paid on the original excess determination will be refunded.
2. Excess transfer balance earnings amounts applied to the members transfer balance account are to be reversed.

Amounts commuted from the SMSF account-based pension would be held in an accumulation interest in the fund. The result is a loss of some of the exempt current pension income treatment for taxation purposes. We acknowledge that this is difficult to remedy as this may extend over multiple years.

A compensatory measure would be to allow a member to add amounts reinstated on the retrospective application of these amendments, directly to an existing account-based pension. This is not permitted under the operation of existing superannuation law. It would however alleviate some of the additional administration and cost that would be incurred by the member in returning these amounts back into a pension interest.

Members are prohibited from adding further capital to an existing pension account. Without a legislative amendment to allow the reinstatement of the pension interest, members who wish to return the ejected funds to their pension interest will be limited to the following:

A. Commence a second pension account; or
B. Cease their current pension interest and start a new pension using the proceeds and commutation amount being returned.

Both of the above options will incur additional administration and other costs to the member.

Option A may not even be viable for some. Depending on the magnitude of any adjustment to the member's transfer balance account, the costs associated with starting and maintaining a small additional pension may be prohibitive and not in the best interest of the member.

Option B requires multiple transfer balance account reporting events, which will not qualify as SFTs and could compound the discrepancy between credits and debits in a member's transfer balance account. Each step would also require pension documentation – commencement and commutation documentation as applicable.

Removing the red tape and regulatory restrictions for these limited circumstances would assist greatly in addressing these one-off issues. It would go some way to compensate funds for the loss of ECPI that would not have been lost were these measures operative from 1 July 2017.

If you have any questions about our submission, please do not hesitate to contact us, and we thank you again for the opportunity to provide this submission.

Yours sincerely,

Tracey Scotchbrook
Head of Policy and Advocacy

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.