20 October 2011

The General Manager
Business Tax Division
The Treasury
Langton Crescent
Parkes ACT 2600

Email: cgt_super_roll-over@treasury.gov.au

Re: Capital Gains Tax (CGT) Rollover for MySuper Reforms

Dear Sir/Madam,

Executive summary

The following details our submission in brief:

- CGT rollover relief has been made available to merging superannuation funds on three previous occasions;
- In each case, the relief has supported Government policy objectives of improving the efficiency of the superannuation industry through fund mergers;
- Two Government initiated processes have recommended ongoing relief;
- Both MySuper and CGT rollover relief will contribute to fund and product rationalisation, and should be considered complementary policy initiatives;
- Current uncertainty about relief is inhibiting mergers, and increased efficiencies that may result;
- CGT rollover relief for both gains and losses should be available to all funds that make an application to APRA to merge no later than 1 October 2013; and
- Clarification that the deeming of an existing default option as a MySuper product does not trigger a CGT event should be provided.

AIST recommendations

AIST recommends that the Government adopt its previous model of allowing CGT rollover relief as a key mechanism to improve the efficiency of the superannuation system.

Specifically, AIST submits that CGT rollover relief for both gains and losses be made available to all funds that make application to APRA to merge no later than 1 October 2013. This relief should also be made available to funds that do not seek, or are unable to obtain MySuper authorisation, and who may therefore be required to transfer their assets to another superannuation entity.

The Government and the ATO should clarify that the deeming of an existing default option as a MySuper product does not trigger a CGT event.

Background

In the Stronger Super Information Pack of 21 September 2011, the Government announced that it will continue to consult key stakeholders on CGT consequences that may directly arise from transitioning to MySuper and to what extent, if any, CGT rollover relief is appropriate.

This announcement followed the Government's receipt of the Stronger Super Outcomes of Consultation Process report ("the Costello Report"), where it was "*suggested that CGT relief should be ongoing, irrespective of any transition to the MySuper regime and should not be confined to circumstances where APRA has compelled the merger. If a trustee determines that it is in the best interest of fund members to merge funds before MySuper commences then, it is argued, the merger should attract CGT relief*." (page 12)

AIST has previously made submissions to Treasury supporting CGT rollover relief (12 February 2009 and 11 August 2011) in terms that are consistent with this submission.

Context

The Government is committed to improving the efficiency of the superannuation system, and has stated that fund mergers contributing economies of scale assist in delivering this efficiency.

On three previous occasions, the Government has provided CGT rollover relief to superannuation funds in order to encourage fund mergers.

1. From 12 January 1994, as funds amended their trust deeds to comply with SIS requirements;
2. Between 30 June 2004 and 1 July 2006, as funds sought their RSE licence; and
3. Between 24 December 2008 and 1 July 2010 (subsequently extended to 1 July 2011, and then 30 September 2011), in the context of the Global Financial Crisis where the majority of funds had significant unrealised capital losses.

Since this relief was provided, there have been two recent reviews of the CGT rollover relief. Both – the Costello Report quoted above and the Superannuation System Review - have recommended that the Government provide ongoing CGT rollover relief.

The Superannuation System Review noted that in the absence of this relief: "*This potential negative impact can result in some funds foregoing merger plans which would otherwise result in medium-to-long term benefits to the members and industry more broadly*."(Part 2, page 321)

The Superannuation System Review also noted that the facilitative role of this relief between 2004 and 2006: "*Given that the Act's relief extended to gains and losses, a significant number of successor fund transfers occurred during that period.*" (Part 2, page 321)

It should be noted that superannuation fund members who contribute to a regulated superannuation fund that they may or may not have chosen will not generally have a say in whether or not their superannuation fund is merged with another superannuation fund. It is inequitable for these members to be financially disadvantaged by circumstances probably outside of their knowledge and certainly outside of their control.

MySuper reforms

The same factors that existed when relief was previously granted remain today. Namely, Government plans to significantly change the structure and operation of superannuation through a major legislative program; and, significant and ongoing volatility in investment markets, including the possibility of investment losses.

The MySuper reforms involve necessary and unavoidable changes for all superannuation funds that intend to accept default Superannuation Guarantee contributions, and for all superannuation fund members who allow their fund to make investment decisions on their behalf.

The enhanced trustee duties in relation to a MySuper product will require fund trustees to consider if a fund merger is in the best interests of their members. We refer specifically, but not exclusively, to the requirement to actively examine and conclude if a MySuper product has access to sufficient scale, and the other requirements for a MySuper product.

It is also intended that MySuper will result in product rationalisation to further contribute to obtaining economies of scale. This will be a driver of fund rationalisation.

The absence of relief is a brake on delivering economies of scale and driving efficiencies of the superannuation system. It is indisputably bad policy where its absence is the primary factor inhibiting a merger.

Many AIST members continue to carry forward deferred tax assets of more than 1% of FUM – and in some cases significantly more. The realisation of these losses would be a significant cost impost for super funds and their members on top of MySuper transition costs, and the costs of other regulatory change.

Lack of certainty

As with all business sectors, uncertainty undermines the superannuation industry's confidence, and inhibits the ability to plan and make decisions for the future – especially in relation to fund mergers.

The call for submissions on this question raises the possibility that relief may be provided as an interim or permanent measure, and in itself creates uncertainty. However, businesses are not able to make decision on the basis of possibility, preferring to act in an environment that is certain.

The possibility that another period of relief may become available is a present impediment to merging. The merger process involves careful planning and expert consultation and many mergers take in excess of 18 months to complete. Merger processes commenced in the next few months will come to fruition about the time of MySuper transition.

A specific period for the relief will provide the certainty to act in the interim enabling funds to implement mergers not yet in process, which is in line with the Government's objectives of rationalising inefficient funds.

Asset transfers to MySuper

The Government has stated that MySuper assets are to be accounted for separately, but that there is no requirement for MySuper assets to be held separately.

AIST supports the view of the Stronger Super Implementation Regulation Impact Statement that this will reduce the requirement for funds to buy and sell assets to give effect to the transfer of balances into MySuper.

If asset sales are required, this would give rise to CGT and stamp duty consequences which are likely to result in lower returns to members. Not-for-profit funds are likely to deem their existing default investment options as their MySuper product. While this is unlikely to require asset sales or otherwise trigger a CGT event, the Government and the Australian Taxation Office should, out of an abundance of caution, clarify that the establishment of a MySuper product in this way does not trigger a CGT event.

Cost to Government

AIST notes that the 2011/2012 Federal Budget included provisioning for the extension of CGT rollover relief from 30 June to 30 September 2011. The Government expected no material cost or gain from this measure.

This provisioning was also included in previous budgets. In the Updated Economic and Fiscal Outlook 2008/2009 it is stated that: "*The nature of the measure is such that a reliable estimate cannot be provided".* This was also the case in the 2009/2010 Budget.

It is submitted that expected investment market volatility will make it difficult to estimate the cost or gain from extending relief until 2013.

Contact

Please contact either AIST project Director David Haynes (phone: 03 8677 3800 or email: dhaynes@aist.asn.au) or myself (phone: 03 8677 3800 or email: freynolds@aist.asn.au) if you have any questions about the AIST submission.

Yours sincerely,

Fiona Reynolds

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Chief Executive Officer

About AIST

The Australian Institute of Superannuation Trustees (AIST) is a national not-for-profit organisation whose members are superannuation fund trustee directors and officers of industry, public sector, and corporate superannuation funds who operate with a representative Trustee Board of Directors.

As the peak representative body for the not-for-profit super sector, AIST advocates on behalf of its members, undertakes research, develops policy and provides professional training, consulting services and supports trustee directors and staff to help meet the challenges of managing superannuation funds and advancing the interests of their fund members. The $450 billion not for profit super sector manages the super interests of nearly two-thirds of the Australian workforce.