

8 December 2016

Mr Graham Hager
Australian Taxation Office
Via email

Email: superconsultation@ato.gov.au

Dear Mr Hager

Re: Draft Law Companion Guideline LCG 2016/D9: Superannuation reform: Transfer balance cap

In brief:

LCG 2016/D9 provides guidance around the recently legislated transfer balance cap which restricts amounts going into the tax-exempt retirement phase of superannuation. AIST welcomes the guidance, and takes the opportunity to raise potential areas for clarification.

AIST welcomes the opportunity to comment on this draft law companion guideline. As we have indicated in our submissions to date, the transfer balance cap is the most complex area of the superannuation reform package. Consequently, we believe that the industry will welcome all guidance that is able to be provided.

Whilst we are aware that the ATO have also released Draft Law Companion Guideline LCG 2016/D8 for consultation, we have chosen at this stage to restrict our comments to LCG 2016/D9.

Commencement of a retirement income stream at end of a Transition to Retirement Income Stream

We note that the transition to retirement income streams (TRIS) are not included for the purposes of amounts credited to a taxpayer's transfer balance account balance. This brings up an interesting situation where some funds are uncertain about the legal relationship between the trustee and the members upon turning 65 (or upon meeting another condition of release). We note that some funds which offer TRIS products in addition to ordinary account-based income streams maintain these as separate products, and as such, there is a question over whether the member has actually transferred to a superannuation income stream in the retirement phase for all legal purposes.

We would welcome clarification in the LCG 2016/D9 of how income streams are treated in these circumstances.

An additional concern relates to how the information regarding retirement income balances is gathered. Similarly to our comments above, we would welcome discussion of how amounts in a superannuation income stream in the retirement phase is differentiated from TRIS amounts. We believe that there is not enough information to provide certainty that false positive amounts will not give rise to a credit to one's transfer balance account balance inadvertently.

Timeframes for processing commutations

LCG 2016/D9 contains no explanation around timeframes for processing amounts as commutations where required for the purposes of managing amounts in excess of transfer balance caps. We believe that a normal request that may involve commuting funds back to the accumulation phase is conceptually similar to a rollover, and therefore a three-day time limit should apply.

Harshness of indexation method

In our submissions to Treasury and the Senate Economics Legislation Committee on the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016*, we pointed out the harshness inherent in situations where mistakes could be made when commencing retirement income streams. For example, if someone purchases a retirement income stream for \$1.6 million in error and corrects their mistake the next day with a commutation of \$800,000, the impact on their personal transfer balance cap and the corresponding unused portion is different to another taxpayer who correctly commences a retirement income stream with \$800,000 at the same time.

AIST would welcome clarification in this instance of whether Commissioner discretion is able to be obtained in regards to adjusting for errors such as this.

ATO advertising campaign

We note that for affected members of superannuation funds, there may be some uncertainty as to what may happen when the new rules commence on 1 July 2017. We also note that for some taxpayers, getting their retirement income arrangements settled may be preferential prior to this date, and for others it may be after.

In order to properly ensure that members are aware of all options available to them, AIST recommends that a campaign be undertaken directly with members aged 55 and over, in a form of communication appropriate to the taxpayer. AIST would be happy to consult with the ATO to assist with this information campaign.

Please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au should you wish to discuss our submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Garcia', is written over a light blue horizontal line.

Tom Garcia
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$700 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

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