THE TAX INSTITUTE

THE MARK OF EXPERTISE

25 August 2015

The Hon Josh Frydenberg MP
Assistant Treasurer
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

By email: josh.frydenberg.mp@aph.gov.au

Dear Minister,

MySuper transfers within a fund

The Tax Institute welcomes the income tax relief the Government is providing to facilitate the transition to MySuper products, and in particular for its agreement to allow rollover for transfers within a fund in this process in the Media Release dated 29 June 2015 (**Media Release**)

We are writing to draw to your attention two aspects of the rollover as proposed in the Media Release that we submit will need to be amended to ensure that the relief operates equitably and efficiently, and has its intended effect. They are set out below.

Loss transfers

As currently framed in the Media Release, the new rollover would not extend to transfers of losses. However, without these transfers the rollover could not in all cases cover *"the consequences of transfers within a super fund, where the transfer is required under the law*".

Member accounts being moved into MySuper products, often quite small balances held for relatively low income earners, will usually recognise the value of available tax losses or at least stand to benefit from them even if not expressly recognised in the account balance. The losses may be pooled superannuation trust (**PST**) losses or life insurance company losses and may be lost to the members if not transferred.

The trustee of an affected super fund could not fairly recommend that members transfer to a new product within the fund in cases where material losses would not be lost to them if transferring to a MySuper product offered by another fund. Division 311 of the *Income Tax Assessment Act 1997* allows loss transfers for MySuper transfers to another fund, as does Division 310 for fund mergers. The lesser treatment of MySuper transfers within a fund, unless rectified, will unnecessarily disadvantage both these funds and their affected members.

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Accordingly, we submit that loss transfer relief should be made available for MySuper transfers within a fund at least to the same extent as it is currently available for Division 310 and Division 311 transfers.

Replicate structures

As currently announced in the Media Release, the new rollover would also seem to require replication of the same investment structure as currently serving transferring members. The Media Release states that '*the relevant MySuper product will need to be offered through the same type of structure as the default product*'. For example, if a PST is used in whole or part to support the current default product, the new MySuper division would seemingly also need to invest in whole or part through a PST.

Given the intention of the relief is to facilitate the introduction of new and simpler MySuper products, and eliminate more costly investment structures, this requirement seems a counterproductive fetter on investment efficiency. Superannuation funds should be able to utilise the simpler investment structures that best suit the MySuper product being made available. Again, Divisions 310 and 311 of the *Income Tax Assessment Act 1997* do not contain this restriction.

Accordingly, we submit that relief for asset transfers should not be restricted any more than would be the case if Divisions 310 or 311 applied.

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The Tax Institute would be welcome an opportunity to assist Treasury in framing the draft legislation for the relief announced in the Media Release as necessary.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Thilini Wickramasuriya, on 02 8223 0044.

Yours faithfully,

Stephen Healey

Stephen Healey
President

cc. Mr Paul Tilley, General Manager, Personal and Retirement Income Division, The Treasury - paul.tilley@treasury.gov.au