

SUBMISSION

Submission to Board of Taxation — Review of CGT Roll-overs consultation paper

5 February 2021

**The Association of Superannuation
Funds of Australia Limited**
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)

F 1300 926 484

W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

File: 2021/02

Board of Taxation Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: cgtrollovers@taxboard.gov.au

5 February 2021

Dear Sir/Madam

Review of CGT Roll-overs consultation paper

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Board of Taxation's Consultation Paper: *Review of CGT Roll-overs*, released on 23 December 2020.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 16 million Australians with superannuation.

Background

As you are aware, ASFA participated in a consultation session with members of the working group on 20 February 2020 and made a detailed submission dated 5 June 2020 in response to the Board's earlier Consultation Guide. This reflects ASFA's significant interest in the Board's review, given its relevance to the superannuation industry from two distinct but important perspectives:

- superannuation funds are investors into corporate and other vehicles which might avail themselves of roll-over relief
- superannuation funds might also, in their own right, seek to access relief in the context of undertaking fund mergers or other restructures (including in relation to wholly-owned or otherwise controlled entities).

In each of these capacities, the role played by the superannuation industry is critical to Australia's economic and social prosperity.

Superannuation funds as taxpayers

Superannuation funds are significant taxpayers in their own right. Tax paid by superannuation funds — mainly relating to tax on assessable contributions and tax on assessable investment earnings — makes a substantial contribution to Australia's tax base.

Subject to some exceptions (for example, cash and TOFA assets), the CGT regime is the primary taxing code for superannuation funds. As such, the availability of CGT roll-overs is crucial to the modern investment regime of superannuation funds. However, while funds have grown in sophistication as investors since they became taxable in 1988 — both in terms of the types of assets held and the way in which they are held — this evolution is not reflected in the tax code.

Further, a modern superannuation fund may have evolved from a life-backed model, a typical unitised retail model or from investments in unit trusts. As a result, there are numerous legacy structures within superannuation funds that would benefit from rationalisation if the tax settings provided for it. From a policy perspective, this rationalisation would create efficiencies that flowed through to cost savings for fund members and improved returns.

General comments

ASFA welcomes the introduction of a general business restructure roll-over, as proposed in the Consultation Paper.

However — as the Board acknowledges in the Paper — the current proposal focuses on rationalising the existing CGT roll-overs and associated provisions, which are generally applicable to corporate entities.

As detailed in our submission dated 5 June 2020 to the Board's *Review of CGT Roll-overs – Consultation Guide*, ASFA has two key points of focus in relation to this consultation:

- the operation of Division 310 of the *Income Tax Assessment Act 1997*, in the context of business reorganisations which allow for changes in underlying economic ownership
- the need to expand current business restructuring rules for corporate groups so that these are available to entities within structures that are wholly-owned or otherwise controlled by large superannuation funds.

In relation to Division 310, our earlier submission highlighted a number of important improvements which we consider necessary to ensure the division provides effective relief that reflects the environment in which large modern superannuation funds operate. In particular, we note the need to extend Division 310 to include situations involving the transfer of groups of members and their assets from one large superannuation fund to another without the closure of the original fund — for example, where member divisions or sub-plans within one large fund are moved to another large fund.

The CGT roll-over and loss transfer rules provided for within Division 310 are critical to efficiency in ongoing consolidation within the superannuation industry and we would urge the Board to expedite its consideration of any improvements to the Division 310 regime.

Further, as superannuation funds continue to grow and mature, the ability to restructure investment holdings is also critical to ensure investment structures remain efficient, competitive and fit for purpose, to help maximise the retirement outcomes for Australia's superannuation fund members.

ASFA is concerned that if further expansion and alignment is not incorporated in the Board's current review, Australia's large superannuation funds will continue to be subjected to restrictions that appear contrary to the policy intention and principles of the CGT roll-over provisions.

Specific comments regarding the design of the general business restructure roll-over

In response to questions around the design of the general business restructure roll-over provisions, we submit that the proposed roll-over could be broadened and made available to large superannuation funds in restructuring assets and ownership interests held within wholly-owned or otherwise controlled entities.

As you would be aware, under the tax consolidation rules, a superannuation fund cannot be the head company of a tax consolidated group. As such, wholly owned companies and unit trusts are separate taxpayers. As a result, transactions between these entities currently have tax consequences.

CGT relief could be achieved by extending the scope of the restructures covered by the proposed roll-over to cater for same asset roll-over between wholly owned entities that are not able to form a consolidated group. This would allow superannuation funds to transfer assets up (or down) from (or to) wholly owned companies and/or trusts, as well as between wholly owned companies and trusts where there is no change in the beneficial interest.

More specifically, ASFA submits there is scope to amend the eligible restructure to cover scenarios where there is no 'replacement asset', by introducing a 'substantially equivalent market value' requirement for the transferor and transferee (ultimately the same beneficial owners) in place of the replacement asset requirements. For example, we note that —as currently outlined — the proposed roll-over would apply where a parent entity transfers an asset to a wholly owned subsidiary in exchange for units or shares (downstream transfer). However, it would not appear to apply where the subsidiary entity transfers an asset to a parent entity, because shares/units in the parent would not be issued to the subsidiary (upstream transfer). In particular, in the case of an upstream transfer to a superannuation fund, there would be no replacement asset as no unit can be issued in this case.

ASFA further submits it would also be appropriate to extend the relief to include entities controlled by large superannuation funds, but which are less than wholly-owned, in situations where there is no change in beneficial ownership. This would enable the same CGT relief to be provided to superannuation funds that invest through investment platforms along with other superannuation funds and other minority investors — a common investment structure in the superannuation industry, used to enhance scale efficiency.

As detailed in our earlier submission, ASFA considers that expanding the scope of the roll-over provisions to superannuation funds is consistent with the general policy intent underlying CGT roll-overs. Specifically, the expansion proposed by ASFA would help to avoid the detrimental impacts on efficient business activity that occur where assets are 'locked-in' to inefficient structures because no roll-over relief is available. Given the situations we have highlighted involve no effective change in beneficial ownership, ASFA submits they would not undermine the integrity of the CGT regime.

If you have any queries or comments in relation to our submission, please contact me on (03) 9225 4027 or by email jstannard@superannuation.asn.au. We would welcome the opportunity to discuss these matters with the Board.

Yours sincerely

Julia Stannard
Senior Policy Advisor