SUBMISSION 4

UniSuper

Friday, 5 April 2013

Committee Secretary
Standing Committee on Economics
PO Box 6021
Parliament House
Canberra ACT 2600

Delivered via email: economics.reps@aph.gov.au

Dear Sir,

Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2012

We refer to the above Bill and make the following submissions.

Our submissions are confined to Schedule 5 of the Bill, which provides for the mandatory merger of superannuation accounts.

Executive summary

As a general proposition, UniSuper strongly supports the policy in reducing the unnecessary duplication of administrative fees which are being borne by disengaged members who have multiple accounts *of the same kind* within the same superannuation fund.

However, we are concerned that the Bill has been drafted in a way which unnecessarily and sub-optimally increases the burden on superannuation trustees and their administrators:

- by requiring trustees to consider the particular circumstances of each individual member and then forming a view as to whether or not it would be in their personal best interests to merge accounts;
- by exposing trustees to the risks of complaints from aggrieved members, regardless of whether or not a decision is made to merge accounts; and
- by requiring trustees to merge accounts which, although within the same superannuation fund, may be markedly different and pertain to quite different financial products with distinct characteristics.

These are issues on which UniSuper is particularly well-positioned to express a view. UniSuper has more than 475,000 members and more than $35

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billion in assets, making UniSuper one of Australia's largest superannuation funds.

Even though UniSuper is structured as a single superannuation fund, it comprises four divisions: two defined benefit divisions and two accumulation divisions. Although the two defined benefit divisions would be exempt from Schedule 5 of the Bill, the two accumulation divisions would be subject to the provisions requiring accounts to be merged, which is a serious issue because our two accumulation divisions are different in some significant respects. UniSuper is not unique in this regard and similar difficulties would arise for other funds comprising multiple divisions or sub-plans, including master trusts and platforms.

We elaborate on these issues below.

Substantial burden in assessing personal circumstances of each affected member

The Bill and the Explanatory Memorandum have both been prepared on the basis that trustees will have to consider the personal circumstances of each member who has multiple accounts within the same fund and make a tailored decision as to whether or not merging accounts would be in the best interests of the particular member concerned.

This is potentially an impractical and costly burden to impose on trustees, especially for trustees who operate funds with close to half a million members.

Other reforms, such as SuperStream, are encouraging trustees to adopt increasingly automated procedures. We had assumed that the Bill would facilitate the adoption of a sensible, rules-based approach for merging accounts that would be scalable and capable of a degree of automation.

By requiring an individualised assessment to be made for each member, the process will necessarily be a manual one. The Bill also puts trustees in a position where they may need to proactively seek further information from the member, which adds to the burden and is likely to increase the overall costs of administering the fund.

In this regard, we note that some funds, like UniSuper, have already adopted systems which periodically consolidate accounts of the same kind which are held by the same member on an automated basis. The Bill in its current form would potentially require these existing systems to be abandoned and replaced with a more manual process.

An alternative, preferable approach might therefore be to require trustees to adopt a policy that is fair and in the best interests of members *on the whole*, without requiring individualised assessments based on the personal circumstances of each member.

Risk of legal liability regardless of whether accounts are merged

The original exposure draft was prepared on the basis that there would be a mandatory obligation to consolidate small, inactive accounts. While this approach was inflexible (and would have required appropriate exceptions to be allowed for), it provided trustees with certainty as to what action was required and therefore provided safe-harbour from claims by aggrieved members who, for some reason, may not have wanted their accounts consolidated.

The Bill, on the one hand, gives trustees more flexibility by leaving the decision whether to merge accounts in the hands of trustees. However, this exposes trustees to the risk of complaints by aggrieved members, regardless of whether or not accounts are merged. If a trustee does decide to merge accounts, members might complain if they lose some benefit or experience inferior investment performance following the merger. On the other hand, if a trustee decides not to merge accounts, members might nevertheless complain because they think they would have been better off if their accounts had been merged. In either case, the trustee will be exposed to the risk of legal liability.

The Bill would specifically require trustees to focus on cost implications when deciding whether to merge accounts. This appears to suggest that cost implications are the only relevant consideration, or the most relevant consideration, and overlooks other factors, such as the impact on insured benefits, taxation implications and any resulting changes in investment strategy. The existence of a payment flag preventing changes to a member's account may also be a relevant consideration.

We are also concerned by the absence of any protection for trustees in cases where the merger results in part of a member's account balance being invested in a different investment option (that is, compared to the investment option in which it was invested prior to their accounts being merged).

Whereas the MySuper reforms provide specific protection for trustees in the analogous scenario where an account balance is transferred to a MySuper product, the Bill does not include any such protection and therefore leaves trustees exposed to the associated risk of complaints and legal liability.

Different types of account within the same fund

Finally, it is significant to point out that the Bill potentially requires very different types of accounts to be merged, just because they happen to be under the umbrella of a common superannuation fund.

An initial choice regarding product structure can therefore produce very different outcomes under the Bill. Where different products are structured as separate superannuation funds, they will be exempt from the Bill even though they are operated by the same trustee and administrator. In contrast, if the different products are structured as different sub-plans or divisions within a single superannuation fund, then they would be subject to the account merger provisions in the Bill.

In UniSuper's case, a member may have an account in either "Accumulation Division 1" or in "Accumulation Division 2" or, in some cases, in both.

From a systems perspective, it is difficult to treat a member as having an account which straddles both divisions. It is significant to point out that there are currently technical differences between the divisions, particularly with regard to insured benefits.

Analogous difficulties have had to be confronted in the context of preparing for MySuper. While those difficulties are being navigated, it is significant to point out that that work has been done over the course of 12 months and is a major body of work, as indeed the MySuper transition is for many funds.

Although there is an exception in the Bill for cases where it is not practical to merge accounts, the Explanatory Memorandum suggests that the exception may be intended to be a narrow one. As such, the Bill gives rise to real ambiguity as to just how much impracticality must manifest before a trustee can legitimately rely on the exemption. Clarification in this regard would be appreciated by industry.

That said, the point here is not one of practicality versus impracticality. There is a higher level question of whether the Bill should be requiring accounts which are fundamentally of a different type or character to be merged; or whether the Bill should only require accounts *of the same kind* within the same fund to be merged.

Yours sincerely,

Terry C. McCredden
Chief Executive Officer