

24 April 2024

Adam Hawkins
Assistant Secretary
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: superannuation@treasury.gov.au

Dear Mr Hawkins

RE: Amendments to the transfer balance credit provisions for successor fund transfers

The Financial Services Council (FSC) welcomes the opportunity to make a submission to the Treasury on the amendments to the transfer balance credit provisions in the *Income Tax Assessment (1997 Act) Regulations 2021* for successor fund transfers (the amendments).

The FSC is supportive of the amendments, which industry has been calling for, since there have been known unintended consequences in the successor fund transfer (SFT) process. These amendments are necessary to allow for SFTs to occur without causing undue impact to classes of members who have unfairly had increases to their transfer balance account (TBA), which in turn reduces their transfer balance cap (TBC) space. The FSC is also supportive of the retrospective implementation of the amendments which will correct the application of TBC for any consumers that have been negatively impacted by this unintended consequence.

The FSC would however like to raise concerns with how the amendments would be brought into practice, particularly in instances where they need to be retrospectively applied. Currently, as the amendments and corresponding explanatory statement are drafted, there is a risk that the successor fund would be responsible for recognising the adjustment to consumer's TBA. The FSC submits that the Australian Taxation Office (ATO) would be best placed to do this as they already have records of the predecessor fund TBA debit entry and also the successor fund's TBA credit entry. It may be extremely difficult or near impossible for the successor fund to obtain and report the correct TBA credit entry in some instances which would make it difficult to comply.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

Fix for SFT unintended consequence

There has been a need for a fix for the identified unintended consequence impacting consumers with a capped defined benefit income stream (CDBIS). A consumer can be worse off through either an increase in their TBC space or disadvantaged and subject to additional tax if the SFT led to a breach of their TBC. The FSC supports the amendments as they are written as the methodology of matching the TBA debit and credit entries should do as intended and eliminate any change in a consumer's TBC space as a result of the SFT.

The FSC also recognises that this unintended consequence has occurred in several SFTs that have occurred in the past and supports the retrospective implementation of the amendments going back to 1 July 2017.

RECOMMENDATION 1

The FSC supports the amendments as they are written, including the retrospective implementation going back to 1 July 2017.

Implementation of amendments

Whilst the FSC supports the amendments and how they have been written legislatively, we would like to raise a concern with some practical elements of how it would be implemented in practice. It is important that the amendments are able to take effect in a way that is both practical and does not create significant industry burden.

The amendments as drafted would likely leave it to the successor fund trustee to determine whether any of their members had been adversely impacted by an SFT and hence, the need to re-report the SFT credit. Ordinarily, the successor fund only has knowledge of the SFT credit entry for the new CDBIS and have no point of reference to determine if this credit amount will need to be corrected and re-reported with the predecessor fund's SFT debit entry. This makes it administratively difficult to apply, particularly for historical SFTs where there may no longer be a contactable predecessor entity in the cases where they have completely wound-up operations.

The ATO would be in a much better position to determine if anyone has been adversely impacted by an SFT as they collect both, the debit and the credit information at the time of the SFT and would be able to either alert or re-submit the debit entry on behalf of the member. This would also allow for acknowledgement from the ATO to inform the member and successor fund trustee that the TBC space issue has been resolved on their behalf. The FSC understands that this level of implementation would not be suitable for the regulation but recommends that either the explanatory statement put the onus on the ATO to administer amendments or that the Government release a letter explaining the ATO's responsibility in the implementation of the amendments.

The FSC will also be raising these issues with the ATO to ensure they are aware of the impracticalities involved if successor fund trustees were responsible for implementing the changes.

RECOMMENDATION 2

The explanatory statement or complimentary letter from the Government clearly explain that the ATO is best placed to administer the changes as a result of the amendment.

If you would like to discuss anything contained in this submission, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Aidan Johnson', written in a cursive style.

Aidan Johnson

Policy Manager, Superannuation