

16 March 2012



Committee Secretary
Parliamentary Joint Committee on
Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Email: corporations.joint@aph.gov.au

Dear Sir/Madam,

Re: Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 (Bill) – Section 29TA Material Goodwill Exception

We are writing to raise with you an additional concern we have with the operation of proposed section 29TA of the Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2011 (the Bill).

In BT Financial Group's (BTFG) previous submission to this Committee on the MySuper Core Provisions Bill, we said that we believed APRA should only be responsible for licensing the ability of the trustee to offer MySuper products, which would be a natural extension of its current role in licensing trustees. As such we do not support APRA having an obligation to actively approve all tailored (or separately branded) MySuper product offerings.

Whilst our views on this matter are unchanged, should APRA approval for separately branded MySuper product offerings remain, we would like to raise a critical issue with the current drafting of section 29TA which has recently come to our attention.

Section 29TA: The material goodwill exception does not recognise recent mergers

The proposed section 29TA of the Bill would potentially allow a single RSE to offer more than one MySuper product (subject to APRA approval) where it was able to demonstrate, amongst other things, that there was material goodwill in a product prior to it being transferred to a fund which already offers a MySuper product (the material goodwill exception). The current draft provision only allows a fund to apply for a material goodwill exception where the merger or transfer activity occurs after 1 July 2013.

Our key concern is that the current drafting of section 29TA is not supportive of the material goodwill exception where the merger or transfer has occurred prior to 1 July 2013.

As a result, the Bill does not recognise the significant efforts that trustees have made in very recent times, and well before 1 July 2013. In fact many mergers have taken place in the lead up to September 2011, under the encouragement of the Government which removed a significant taxation barrier by providing temporary CGT loss relief for mergers commencing on 24 December 2008 up until 30 September 2011.

BTFG is one such organisation that merged funds in the lead up to 30 September 2011, rather than maintaining multiple funds/RSEs, to create a more efficient outcome for our members.

A single RSE is more efficient than multiple RSEs

As a multi-branded organisation, with significant goodwill in our brands, we are acutely aware of the need preserve existing brands that members recognise and trust.

Issuing different products through sub plans of one fund (RSE) rather than maintaining multiple funds/RSEs is more efficient for multi-branded organisations and for the industry generally. Trustees can operate each different product as a sub plan within a larger fund as this allows them to gain operational efficiencies across multiple products which ultimately benefits fund members.

In our recent merger, we merged RSEs to create operational efficiencies and then created sub-plans within the new fund to allow us to preserve our brands.

An inefficient solution would be to wind up products and transfer them to separate RSEs

The approach of section 29TA potentially places trustees, who wish to preserve brands with significant goodwill, in a situation where they may need to wind up such products and transfer them to new fund/RSE. Such a transfer would allow the existing branding of the products (with tailored features aligned to particular member segments) to be maintained, adding value to the particular member segment that each brand supports.

Another alternative would be for a class of members within an existing product to be transferred to another fund/RSE and then back again after 1 July 2013 in order to be able to apply for the exception in section 29TA.

Both solutions to the problem faced by funds/RSEs that merged prior to 1 July 2013 and wish to continue to preserve brands with significant goodwill are extremely inefficient. The solutions create unnecessary costs which may ultimately be borne by members of the fund as they are legitimate fund expenses.

As such we believe the only efficient solution is to allow funds/RSEs that are to be, or were merged, to apply to APRA for a material goodwill exemption.

If the Government or APRA has concerns about the volume of funds which may apply to APRA for the goodwill exception, a possible solution could be to limit the exception to funds which merged on or after 24 December 2008 (the start date of the transitional CGT loss relief provided to encourage fund mergers).

APRA representatives are supportive of our position

In recent discussions with APRA representatives we highlighted the difficulties and current limitations of section 29TA.

The APRA representatives were supportive of BTFG's situation and predicament, particularly as APRA were closely involved in BTFG's recent activity in merging a number of superannuation funds in 2011, which was done at significant cost to BTFG but ultimately for the benefit of members.

BTFG undertook the rationalisation and merging of a number of its super funds using the temporary CGT loss relief with an objective of benefiting members.

In our discussions with APRA, they noted that under the Bill, as currently drafted, they would have no authority to accommodate or exercise discretion to take account of the circumstances of the BTFG superannuation products and the merger activity occurring prior to 1 July 2013.

Request for section 29TA to be amended

We ask that section 29TA be amended to accommodate super fund merger activity prior to 1 July 2013. We believe a simple amendment would allow for pre 1 July 2013 mergers while maintaining the objectives of the MySuper legislation.

We have attached a suggested legislative amendment in Appendix A to assist in this respect.

Please do not hesitate to contact me to discuss this submission further.

Yours sincerely,

Alyson Clarke
Head of Government & Industry Affairs
BT Financial Group

Appendix A: Proposed amendments to section 29TA

Our proposed amendments to Section 29TA, the material good will exception are marked up below in blue.

29TA Product in another fund in which there is already material goodwill

This section is satisfied in relation to a class of beneficial interest in a regulated superannuation fund (the ***proposed MySuper product***) if:

- (a) the benefits of members and beneficiaries in another regulated superannuation fund (the ***original fund***) are to be, or were, transferred to the fund; and
- (b) APRA is satisfied that:
 - (i) some or all of the persons whose benefits are to be, or were, transferred hold, or held, a class of interest in the original fund that is similar to the proposed MySuper product; and
 - (ii) there is, or was, material goodwill in that class of interest in the original fund; and
 - (iii) that goodwill could not be maintained unless the RSE licensee were authorised to offer the proposed MySuper product as an additional MySuper product in the fund; and
 - (iv) it would be in the best interests of the members of the fund, and those persons whose benefits are to be, or were, transferred to the fund, to maintain the distinction between the proposed MySuper product and other MySuper products within the fund.