Super Outcomes Federal Budget 2020

October 2020

Your future, your super package

Last night's Federal Budget included a major new package of superannuation measures entitled *Your future, your super*, including a new performance test for super products, new best interests obligations for trustees and the "stapling" of employees' super accounts to them as they move between jobs.

Reducing multiple accounts

From 1 July 2021 if an employee does not nominate a fund at the time they start a new job, employers will pay their superannuation contributions to their existing fund where one exists (rather than a default fund). Employers will obtain this information from the ATO online if it is not provided by the employee. Effectively the employee's account will be stapled to them.

Employees new to the workforce who do not have an account and do not make a decision regarding a fund will have their employer contributions paid into the employer's nominated default fund.

In our view this measure will, over time, help reduce costly and unwanted multiple accounts. However, there are a number of matters that will need to be clarified. For example, if a member currently has more than one account, which one will receive their new employer's contributions? What will happen if a fund is unable to accept contributions from the new employer? The interaction with State legislation that specifies a super fund is also unclear.

YourSuper comparison tool

A new *YourSuper* online comparison tool will be developed by the ATO that will, from 1 July 2021, provide a table of MySuper products ranked by fees and investment returns. It will link users to super fund websites where they can choose a MySuper product, as well as showing their current super accounts and prompting them to consider consolidating accounts.

The status of the YourSuper tool as a government provided tool means that it will carry particular weight among superannuation members. In our view there is a risk that the focus on fees and past returns over a limited period could create the impression that these are the only factors that should be considered in choosing a fund for future contributions. There are many other factors that are also important in choosing a fund. Further, being based on the Heatmap, the tool does not cater for certain fund-specific benefits that can be critical to the choice of fund. Our concern is that members may make less than optimal choices by relying on the information provided by these two factors alone.

Annual performance test

MySuper products will be subject to an annual performance test commencing from 1 July 2021. If they are underperforming, funds will need to inform members of this by the following 1 October, and provide those members with information on the *YourSuper* comparison tool, where they will be listed as underperforming until their performance improves. Funds that fail two consecutive annual performance tests will not be permitted to accept new members until their performance improves.

The annual performance test will be based solely on net returns to members. It will use the methodology used by APRA in its MySuper Heatmap. Products that underperform their net investment return benchmark by 0.5 per cent per year over an eight-year period will be classified as underperforming. For MySuper products that were in place from 1 July 2014, their first performance test will be based on seven years of performance data, though on an ongoing basis the test will apply over an eight-year period. The test will be conducted and the results published by APRA, with the cost of the measure to be met from increased levies on super funds.

Annual performance tests are to be extended to "trustee-directed products" (TDPs) by 1 July 2022. These will be accumulation products in APRA regulated funds where the trustee has control over the design and implementation of the investment strategy and where the investment strategy covers more than one asset class. Over time, other investment options will also be subject to the annual performance test.

This measure represents a significant change to the landscape. Explicitly being classed as "underperforming" by the regulator, and being required to notify members of this fact, is something funds will seek to avoid. While the positive effect of this measure may be to reduce the number of underperforming funds, we are concerned with its potential to encourage herd behaviour. It will be important that the reporting under this initiative is framed in a way that, as much as possible, does not discourage funds from exploring active or innovative investment approaches that can lead to higher returns for members in the longer term.

New best interests duty

From 1 July 2021, trustees will be required to comply with a new duty to act in the best financial interests of members. The onus on demonstrating compliance with the new duty will be reversed so that trustees must establish that there was a reasonable basis to support their actions being consistent with members' best financial interests. To ensure that the new duty is complied with, there will be new anti-avoidance measures, to ensure payments from the fund to a third party (including an interposed or a related entity) do not undermine the intent of the changes. No materiality threshold will apply to the new duty.

Increased disclosure for Annual Member Meetings

Trustees will be required to provide members with key information regarding how they manage and spend their money in advance of Annual Member Meetings. The information will include:

- the fund's annual report
- the most recent annual outcomes assessment
- a copy of the member's most recent periodic statement
- a summary of each significant event or material change notice that the fund was required to send members in the last financial year
- remuneration of key executives in line with ASX-listed companies along with any related entity of the fund
- marketing expenditures relating to promoting the fund, either directly or indirectly
- political donations, either directly or indirectly
- sponsorships relating to promoting the fund, either directly or indirectly
- payments to industry bodies or trade associations, either directly or indirectly
- related party transactions (including payments to non-investment entities).

Guidance will be provided to assist funds in presenting the information in a way that allows members to understand the information and ensure there is consistency across the industry.

Other super announcements

The previously announced changes to process for the closure of ERFs were restated. These include:

- ERFs will now be required to transfer accounts below $6,000 to the ATO by 31 June 2021, with remaining accounts to be transferred by 31 January 2022
- all super funds will be able to voluntarily transfer amounts to the ATO where the trustee believes it would be in the best interests of members to do so, including amounts that would previously have been transferred to the ERF.

Other super related measures in the budget papers include:

- an extra $15.1 million for the ATO to combat serious organised crime in the tax and superannuation systems – this extends a measure in the 2017 Budget by a further two years to 30 June 2023
- there will be an extra $159.6 million over four years from 2020-21 to APRA, Treasury and the ATO towards the *Your super, your future* package
- the extension of the COVID-19 early release scheme to 31 December 2020 was restated, with no further extension of the scheme
- the reduction in the minimum annual drawdown amounts for account based pensions was restated, with no further extension beyond the existing two year time frame covering 2019-2021
- the deferral of the commencement of the Retirement Income Covenant from 1 July 2020 to 1 July 2022 was confirmed
- the start date for the ATO to be able to pay lost and unclaimed super amounts directly to New Zealand KiwiSaver accounts has been confirmed as changing from 1 July 2016 to six months after the date of Royal Assent of the enabling legislation
- the deferral of the commencement of the exempt current pension income changes announced in the 2019-20 Budget from 1 July 2020 to 1 July 2021 was confirmed
- the deferral of the start date for the increase, from four to six, in the maximum number of members in SMSFs and small APRA funds from 1 July 2019 to the date of Royal Assent of the enabling legislation was confirmed.

Areas that were unchanged or unannounced

In advance of the Budget there had been speculation regarding a number of possible changes relating to superannuation. However, there were no announced changes to the current scheduled rate of Superannuation Guarantee increases, nor to the contribution caps. As noted above, there was no extension of the current COVID-19 early release scheme. There was also no indication of when the Retirement Income Review report, which was delivered to the government in July, or the government's response might be released.

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