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Mr. Brendan Sheen  
Director  
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Australian Taxation Office

Email: [Brendan.sheen@ato.gov.au](mailto:Brendan.sheen@ato.gov.au)

**RE: Proposed Addendum to GSTR 2004/1: Recent amendments to the GST Regulations**

Dear Brendan,

The Association of Superannuation Funds of Australia (ASFA) would like to lodge these written comments in response to your email of 10 August seeking the association's views on the proposed addendum to GSTR 2004/1 reflecting the ATO's views on the recent amendments to item 32, supplies to recognised trust schemes, as set out in the *A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 1)*.

**About ASFA**

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

**General Comments**

In general, ASFA does not disagree with the technical content of the ATO's preliminary views expressed on the 14 identified issues within the document. We appreciate the effort the ATO has taken to understand the superannuation industries issues.

However, we have identified what appears to be a significant unintended consequence with Questions 7 and 9 and seek some further clarification with respect to Questions 11, 12 and 14. These matters are addressed below.

Additionally, ASFA considers that it would assist taxpayers if the issues addressed in the addendum could be tailored more closely to the circumstances of superannuation funds so as to reduce uncertainty of application. Whilst appreciating that there are always questions of fact and degree some of the examples could include

- Meals consumed by travelling staff when they are on business trips.
- Member education and information seminars held at an external venue (e.g. a hotel) where food is served (e.g. lunch) and included in the cost of the venue hire.
- Lunch/dinners provided at a conference and the value of the lunch/dinner is separately listed in the invoice.
- Contractors who provide services and the service contract was signed before 1 July 2012,
- Subscriptions for magazines and newspapers, and online access for legal/tax databases
- Membership fee renewals covering the period from say May 2012 to April 2013 and the fee is paid in June 2012
- Whether the rental of space in a serviced office constitutes a supply of real property by way of lease or licence

By considerably extending the number of examples the superannuation industry would be able to better understand and apply the principles adopted by the ATO.

#### **Specific comments on certain of the 14 issues**

*Q7: When does an RTS acquire goods by way of lease or hire?*

*Q9: When does an RTS acquire a supply of real property by way of lease or license?*

The interpretation in Q7 is that a supply by way of lease or hire of goods is made at the time when the goods are delivered or first made available. Similarly, with a supply of real property by lease or license, the supply is made when the rights under the lease or license are granted, that is, when the contract is executed.

The effect of this is that any payments under licences or leases entered into by an RTS prior to 1 July 2012 are ineligible for the 55% RITC whereas payments under a licence or lease entered into in July 2012 are eligible for the 55% RITC.

The main area of RTS expense that this is likely to affect is the lease of premises. Generally these leases run for lengthy periods.

While the interpretation appears to be well founded in law, the outcome of the ATO interpretation is that taxpayers in similar situations have significantly different GST outcomes depending on whether a lease or license was entered into prior to, or on or after 1 July 2012.

We note that the purpose of the amendments was to clarify the operation of the law with respect to a supply of trustee services and reduce advantages associated with bundling. However, the effect of the ATO's interpretation in disallowing a 55% RITC on leases and licenses entered into before 1 July 2012 maintains this disadvantage. For example, where a trustee provides leased premises through a bundled supply of trustee services, a RTS will be eligible for a 55% RITC to

the extent the trustee services are performed on or after 1 July 2012, regardless of when the trustee enters into the lease.

ASFA questions whether such an inequitable outcome was contemplated by Treasury when the amendments were proposed.

*Q11: How can an RTS apportion a single fee paid for a mixed acquisition of services made by a trustee?*

ASFA welcomes the ATO guidance confirming the ATO will apply its existing published views on mixed and composite acquisitions.

However, ASFA has considerable concerns with the application of the benchmarking methodology to real life situations. On analysis, the benchmarking approach, although simple in nature and appearing to offer a solution, does not appear to be a practical option in practice due to the lack of information in the market place and differences within funds and industries. Our advice is that an RTS will be challenged by both the requirement to apportion a composite supply comprising a number of components and also the requirement to identify arms-length rates or charges for each of those underlying components.

Following discussions with members, ASFA considers that this issue would be best addressed through the ATO providing a 'safe harbour' (of say 3 to 6 basis points) and the use of "blended RITC rates" that would be the effective rate across portfolios or funds. Our advice is that blended rates would be of particular benefit for making accruals within unit pricing.

The provision of a 'safe-harbour' and also 'blended RITC rates' would enable an RTS to make a commercial decision as to whether to adopt the ATO published numbers or undertake the potentially costly exercise of establishing some other rate or charge.

*Q12: Does a regulated superannuation fund that offers wrap products or an Investor Directed Portfolio Service (IDPS) make a reduced credit acquisition when it engages the services of a financial adviser who:*

- *Provides advice to investors (including establishing the initial investment and ongoing advice concerning investment products);*
- *Executes investment transactions within established investment mandates (including rebalancing a portfolio)*
- *Monitors investment portfolios;*
- *Collects and maintains investor information and records;*
- *Distributes reports, statements and forms to investors; and*
- *Handles investor inquiries?*

ASFA is concerned at the focus of this question on wrap products and Investor Directed Portfolio Services.

As financial advice arrangements are also provided by Industry and employer superannuation funds ASFA requests that the guidance be broadened such that it applies to all superannuation

funds.

*Q14: Does the fact that an entity is a member of a GST group impact whether an entity qualifies as an RTS?*

ASFA is concerned that the guidance and example do not provide for the circumstance where a superannuation fund and an entity that provides services to the superannuation fund are grouped.

This may lead the reader to believe that acquisitions made by the service entity and used to make a supply to the fund may not be covered by item 32 as the service entity is not a recognised trust scheme.

As the intent of item 32 is to cover acquisitions made from any supplier (per the Explanatory Statement), ASFA believes that a 55% RITC should be claimable on an acquisition made by a member of a GST group that is supplied to an RTS within the group for use by the RTS. ASFA would like to see an example included in the guidance confirming this interpretation.

**Item 33**

You also sought descriptions of the most common acquisitions that are for the purposes of compliance with the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*. I am currently still seeking information on this and will respond separately at a later date to this part of your email.

\* \* \* \* \*

If you have any queries or comments regarding the contents of our submission, please contact our principal policy adviser, Robert Hodge on (02) 8079 - 0806 or via e-mail to [rhodge@superannuation.asn.au](mailto:rhodge@superannuation.asn.au)

Yours sincerely

Margaret Stewart



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