

26 July 2010

Manager
Small business, Trusts and Regulation Unit
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: taxagentservices@treasury.gov.au

Dear Sir/Madam

Submission: Exposure Draft – Tax Agent Services Amendment Regulations 2010 (No.)

The Association of Superannuation Funds of Australia (“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. Our members include corporate, public sector, industry and retail superannuation funds plus service providers who provide professional services to SMSFs, account for more than 5.7 million member accounts and over 80% of superannuation savings.

ASFA would like to thank you for the opportunity to provide comments in regard to the above exposure draft regulations proposing amendments to the Tax Agent Services Regulations.

Generally, a superannuation fund cannot act as the head company of a tax consolidated group. Therefore, to gain exemption from the tax agent services regime for tax agent services provided within a group wholly owned by a superannuation fund, the related entities must rely on relief provided by one of the draft Regulations.

Limitations on services that may be provided

ASFA has difficulty in understanding the reason why services provided by a member of a GST group to another member of the same GST group should be limited to BAS services.

ASFA suggests that consideration be given to including 'a service that is provided by a member of a GST group to another member of the GST group' as a separate item under proposed regulation 13 (1) such that members of a GST group are able to supply each other with the broader range of taxation services defined by subsection 90-5 (2) of the Tax Agent Services Act.

Definition of a related entity

The draft regulations specify in 13 (1) (b) that 'a service provided by an entity to a related entity' is not a tax agent service. A related entity is defined by reference to the definition of associated entities in section 50AAA of the Corporations Act. Section 50AAA generally requires the determination of firstly the principal entity and then defines which entities are considered to be associated or related to that entity.

ASFA is concerned that, on a strict interpretation of 13 (1) (B), a tracing is required of which entity provided the services and that such a tracing may limit the application of the proposed exemption where services are provided by an entity wholly owned by a superannuation fund to another entity (company or trust) owned or controlled by the same fund. ASFA suggests that, to overcome this limitation, 13 (1) (b) be expanded to cover services provided within a group of related entities.

ASFA notes that in the minister's press release No. 072 of 23 April 2010 the stated aim was to provide relief where services were provided **between entities** that were members of the same specified group.

If you have any questions in regard to this submission please contact Robert Hodge on (02) 80790806 or rhodge@superannuation.asn.au.

Yours sincerely

A handwritten signature in black ink that reads "D. Graus". The signature is written in a cursive style with a large initial "D" and a long, sweeping tail.

David Graus

General Manager, Policy and Industry Practice