

Submission number 2014/19

2 May 2014

Draft Taxation Ruling TR 2014/D2

The Association of Superannuation Funds of Australia (ASFA) provided a submission to the Australian Taxation office with respect to the Draft Taxation Ruling TR 2014/D2 – Income tax: the application of the foreign income tax offset limit under section 770-75 of the *Income Tax Assessment Act 1997* to foreign currency hedging transactions (“the Draft Ruling”).

The ASFA submission welcomed the release of the Draft Ruling, as the superannuation industry has sought greater certainty in respect of the issues addressed by it for a number of years.

The ASFA submission raises concerned that the Ruling as currently drafted may have significant and unwarranted detrimental effects on the entitlement of superannuation funds to foreign income tax offsets (‘FITOs’). Specifically ASFA raises concerns with:

- Its inconsistency with the policy of relieving double taxation that underpins the legislation.
- The proposal that the ruling, when finalised, apply both before and after its date of issues.
- The ATO’s position on the source of foreign currency hedging gains being where the foreign exchange (FX) contract was formed and not where the master International Swap Dealers Association agreement (‘ISDA’) or IMA is formed.
- The potential that, over time, Australian superannuation funds could incur additional risks in respect of their FX hedging arrangements, higher fees and/or inferior technology or investment skills (due to the absence of competitive pressures from overseas managers), purely as a result of funds seeking to minimise the risk of loss of FITO entitlements.
- The ATO’s interpretation of the words ‘reasonably relates’.
- Issues around apportionment.