

Submission number 2014/28

8 August 2014

### Treasury: Consultation on Australia's tax treaty negotiation program

The Association of Superannuation Funds of Australia (ASFA) lodged a submission with Treasury in response to its consultation on Australia's tax treaty negotiation program.

In the submission ASFA raises three issues for consideration in future treaty negotiations:

1. Australian superannuation funds as "persons" or beneficial owners for the purposes of double tax treaties
2. Potential exemption clause in respect of income derived by superannuation or pension funds.
3. (Relevant to the US-Australia tax treaty specifically) Availability of credit for taxes paid within Australian superannuation funds on contributions and earnings against any US taxes imposed on individuals in respect of such contributions and earnings.

#### *1. Australian superannuation funds as "persons" or beneficial owners for the purposes of double tax treaties*

One of the more significant practical aspects of implementation of Australia's tax treaties is that a number of jurisdictions are not willing to accept that Australian superannuation funds are beneficial owners of income entitled to treaty benefits.

As a result of this stance, they will not accept a Certificate of Residency from the Australian Taxation Office as sufficient documentation to enable a superannuation fund to claim the benefits of the treaty.

ASFA requests that, in negotiating tax treaties with other countries, and/or renegotiating or liaising with jurisdictions in respect of existing tax treaties, key outcomes should include:

- 1 That any agreed withholding tax rates pursuant to the treaty apply to all dividends paid by that country to an Australian person, and that an Australian superannuation fund be specifically included to be treated as an "Australian person" for that purpose;
- 2 That the agreed withholding tax rates should apply at the point of payment of the dividends by companies resident in the other jurisdiction, and not require the Australian person to apply for refund or reclaim of an initially over-withheld amount from the revenue authorities in the other jurisdiction; and
- 3 That if the other jurisdiction requires documentation to evidence that an Australian superannuation fund shareholder is an Australian person, such documentation be limited to a Certificate of Residency obtained by the Australian superannuation fund from the Australian Taxation Office (without any additional specification on this Certificate of Residency in respect of the percentage of the fund's Australian-resident members).

#### *2. Potential exemption clause in respect of income derived by superannuation or pension funds*

ASFA notes that paragraph 69 of Article 18 of the OECD Model Treaty contemplates the inclusion of a specific exemption for a pension fund in one country from tax on its income in the other country. The OECD commentary seems to limit this to circumstances where both countries do not tax pension fund income (unlike Australia, which taxes most superannuation fund income at 15%).

However, the relatively low rate of taxation of superannuation fund income in Australia means that many of the same issues that gave rise to the need for an exemption for pension funds (i.e., taxation in one country, without the capacity to provide adequate credit for such tax in the other country) are also relevant to Australia.

ASFA submits that Australia should consider the inclusion of equivalent clauses in future treaties or renegotiation of existing treaties, to exempt dividend income derived by Australian superannuation funds from tax in the foreign jurisdiction.

### *3. US tax treatment of interests in Australian superannuation funds*

The OECD Model Tax Convention includes Article 18 which allocates taxing rights to the country in which a taxpayer is resident:

However, the Article would appear to not adequately address how to provide credit in foreign jurisdictions for Australian taxes imposed in respect of superannuation contributions, earnings and benefits.

ASFA recommends that the particular issues associated with Australia's taxes on superannuation contributions and earnings, and the availability of credits for these taxes in the foreign jurisdiction be considered in all future tax treaties, and specifically in any review of the US/Australia tax treaty.