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General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: companylosses@treasury.gov.au

RE: Tax loss incentive for designated infrastructure projects

Dear General Manager,

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission with respect to the October 2011 discussion paper on the proposed tax loss incentive for designated infrastructure projects.

The Association of Superannuation Funds of Australia (ASFA) is a non-profit, non-political national organisation whose mission is to advance effective retirement outcomes for members of superannuation funds through research and advocacy. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds as well service providers some of whom deal with self managed superannuation funds (SMSFs), has over 90% of the approximately 12 million Australians with superannuation as members. ASFA members manage or advise on the bulk of the $1.3 trillion in superannuation assets as at September 2011. ASFA is the only organisation that represents all types of superannuation funds and associated service providers.

ASFA notes that the policy objective of the proposed new tax incentive is to promote private investment in infrastructure projects designated to be of national significance.

ASFA also notes the call for superannuation entities to increase their investment in infrastructure projects.

This submission addresses the proposal from the perspective of the superannuation industry and the likely impact on the investment decisions of superannuation entities.

In summary, our position is that we welcome the framework to encourage investment in significant national infrastructure projects as they are important to the Australian economy which superannuation funds invest in. But the actual proposed measures are not significantly relevant consideration of superannuation fund trustees as fiduciary investors.

The key elements of the policy are to identify infrastructure projects of national significance and, with respect to those projects:

- Allow the value of carry forward losses to be uplifted each year by the 10 year Government bond rate and.
- Exempt the carry forward tax losses from the continuity of ownership test and the same business test.

ASFA offers the comments below on the design and implementation details of the proposal.

As identified in the paper, a significant issue when investing in infrastructure projects is the risk of trapped losses that arises from the manner in which infrastructure projects are structured and the types of expenditure they incur.

Whilst the proposed policy seeks to ameliorate the cost of losses being 'trapped' for an extended period by allowing the inflation of the value of those losses by the long term bond rate, it is not aimed at the more significant issue of the possibility of those losses being permanently lost thorough failure of the project. Addressing this issue would better enable funds to directly invest in members' long term interests.

The major beneficiaries of the proposed tax incentives, in ASFA's view, are more likely to be the construction companies, financiers, promoters and promoters of large infrastructure projects than superannuation funds as the eventual long term owners of the infrastructure assets. The superannuation funds decision to invest in an infrastructure asset is primarily based on the income generated by the asset, and therefore tax losses are unlikely to occur during the fund's ownership.

Similarly, whilst the proposed amendment to the continuity of ownership and the same business test will assist an investor seeking to exit a project to achieve an exit price that recognises the new owners ability to access the value of the trapped losses, it would have little impact on the initial decision of whether or not to undertake the initial investment, which focuses more on the potential long term return on the investment.

For the superannuation industry, the law requires that the prime consideration be the likely return on investment and the level of risk. That is, the proposed infrastructure project needs to pass the test of being an appropriate vehicle in which to invest the savings of superannuation fund members. The goal of superannuation funds is investment for profit, not loss. The fact that an infrastructure project is large (greater than $100 million) or is considered to be of national significance also does not alter a trustee's duty when investing in such projects.

However, whilst presence on the national infrastructure significant project list is not a prime determinant for selecting an investment, ASFA welcomes the creation of such a list as it will provide superannuation funds with a clear indication of upcoming projects and this can assist in prioritising investment decisions.

To the extent that this measure will, by providing investors with improved certainty over investment outcomes, encourage additional investment in infrastructure projects ASFA is supportive of the measure. Investment in quality infrastructure assets is a key investment strategy of many superannuation funds.

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Should you have any questions on this matter please contact Gordon Noble, Manager Government Relations, on 03 9225 4018.

Yours sincerely

Pauline Vamos
Chief executive Officer