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19 October 2011

The Manager
Benefits and Regulation Unit
Personal and Retirement Income Division
Treasury Building
Langton Crescent
PARKES ACT 2600

Email: superamendments@treasury.gov.au

RE: Relief for Self Managed Superannuation Fund (SMSF) Auditors

Dear Manager,

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission with respect to the draft regulations that extend the audit period when the audit report cannot be provided on time due to certain circumstances beyond the auditor's control.

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 supports the intent of the draft regulations that seeks to provide some relief to SMSF auditors where a delay in providing an auditor report to the trustee is caused by circumstances out of the control of the auditor. However, ASFA also notes that the penalty for failing to do so still exists as one where imprisonment for six months applies – see subsection 35(C)(7) *Superannuation Industry (Supervision) Act 1993*.

The Explanatory Memorandum (EM) states that “The purpose of the proposed Regulations is to amend the SIS Regulations to ensure that SMSF auditors do not contravene the SIS Regulations if they cannot provide the audit report within the prescribed period due to certain circumstances beyond their control.” Notwithstanding this, the penalty applicable here appears to be a harsh one. Clearly the intention of such a penalty is to ensure that auditors do not

linger in any way in waiting for the records of a fund. If delayed past the safe harbour time frames, auditors should proceed directly to a qualified auditor contravention report.

However there are practical circumstances where the auditor is at times left with little alternative but to wait for records from clients. This can happen in circumstances where a fund that has never been audited is taken on as a client and with most of the audit completed the final pieces of information are not forthcoming. The intent of the auditor is to complete the audit but they now have a decision to make that if they exceed the safe harbour time frame, they expose themselves to a potential jail sentence.

Even though there are remedies available to avoid being liable for such a penalty, such as lodging a qualified auditor contravention report, ASFA contends that such a harsh penalty is counter productive as quite possibly some auditors may choose not to take on a difficult audit in case delays in obtaining records do in fact cause them to breach the time limits. This could result in some audits not being done.

A better approach would be to amend subsection 35(C)(7) and link any penalty to the future auditor registration process to be administered by the Australian Securities and Investments Commission (ASIC) where competency and other requirements of auditors will be regulated. The Australian Taxation Office (ATO) has before it a differentiated compliance treatment for SMSF trustees who breach standards. A similar differentiating approach, administered in conjunction with the proposed auditor registration process would be fairer and more effective process.

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We thank you for this opportunity to provide our thoughts on the draft regulations. Should you have any questions please contact our Senior Policy Adviser, Tony Keir, on 02 8079 0815.

Yours sincerely



David Graus
General Manager, Policy & Industry Practice