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Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Secretary,

Inquiry into the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014 and related bills

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in relation to the Committee's inquiry into the package of bills which propose amendments to the income tax law to introduce the three-year progressive budget repair levy announced in the 2014–15 Budget.

About ASFA

ASFA is a non-profit, non-politically aligned national organisation. We are the peak policy and research body for the superannuation sector. Our mandate is to develop and advocate policy in the best long-term interest of fund members. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General comments

ASFA has some concerns with the very short implementation time frame available which has implications with respect to some of the changes.

The temporary budget repair levy measure is a package of fifteen bills. Of interest to ASFA are the following bills:

- *Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014*;
- *Superannuation (Departing Australia Superannuation Payments Tax) Amendment (Temporary Budget Repair Levy) Bill 2014.*

The vast majority of the bills contain a mechanism for the ATO to advise an individual taxpayer of their tax liability by way of assessment. For superannuation entities, however, the tax collection process is slightly more complex. This is particularly the case with provisions which exist where, while the ultimate, effective incidence of the tax is intended to fall on the fund member, the legal liability for payment of the tax rests with the superannuation entity. The two examples of this, which create implications for superannuation entities, are the provisions relating to Departing Australia Superannuation Payments (DASP) and the tax levied on the no-TFN contributions income of funds.

Where a DASP is made, the superannuation trustee is required to deduct (withhold) the tax from the benefit payment and forward the deducted tax to the ATO. This is done at the time of the benefit payment - any failure to do so would require the trustee to pay the tax from its own resources.

Where a trustee receives concessional contributions in respect of a member who has not quoted their TFN to the fund the contribution generally forms part of the funds no-TFN contributions income and is taxed at a special rate. Whilst the incidence of the tax is intended to fall on the fund member, the liability to pay the no-TFN contributions income tax liability always stays with the trustee.

With respect to both of the above taxes, funds have designed information technology systems to ensure that when a member benefit payment is made that involves either tax impost, the tax is deducted from the member's benefit payment prior to being paid.

Our understanding is that, for most taxpayers, the quantum of any budget repair levy will be determined by the ATO following lodgement of their 2014-15 income tax returns. For the superannuation industry, however, the appropriate tax will need to be deducted from benefit payments that are paid from 1 July 2014 as failure to do so would result in the incidence of the tax falling on the superannuation trustee.

Whilst many superannuation entity trustees already will be analysing the system changes required, in a number of cases it simply will not be possible for these system changes to be made in time and in others the short time to implement would create substantial risk, as indicated by the following risk table:

Identified Risk	**Risk Probability**	**Risk Impact**
As the change needs to be accelerated through the development process there is a risk that a component of the system/communications/calculators could be missed.	Low	High
The quality of testing of the change may be impacted by resource availability, time constraints and impacts of other changes occurring within the environments.	Low	High
Quality assurance testing of the change can only be confirmed in late June at the earliest, after all of the other developments associated with existing 1 July release requirements have been tested and confirmed, and possibly could be later.	Low to medium	High
Other internal priorities could take precedence. This risk relates to the significant number of time critical changes currently being undertaken by funds and conflicting views within the business \ programme office as to which changes have the priority call on scarce resources. This particular regulatory change could be under resourced because of the demand to implement other changes.	Low	High
One or both of the Bills are amended during passage through the Parliament. This could occur after the system change development and testing have been completed.	Low to medium	High

While funds will be endeavouring to implement the effect of the budget repair levy on benefit payments to meet the 1 July 2014 effective date, in some case this will not be feasible and in others implementing these changes will have significant risks due to the short implementation time frame and the resources committed to delivering other compliance and legislative changes by 1 July 2014.

In summary, at issue for the superannuation industry is the exceedingly short time frame which fund trustees have to amend their administration systems to ensure that the incidence of the tax falls where it is intended – on the member – and does not end up having to be borne by the fund and ultimately paid for by other members.

In recognition of this ASFA seeks a deferred commencement date of 1 October 2014 for the imposition of the budget repair levy with respect to Departing Australia Superannuation Payments and, with respect to the non-TFN contributions income tax, that the budget repair levy not apply.

> **ASFA Recommendation**
> With respect to Departing Australia Superannuation Payments, the increase to the tax rate as a result of the budget repair levy not be effective until 1 October 2014.
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> With respect to a fund's no-TFN contributions income, the increase to the tax rate as a result of the budget repair levy not be applied at all.

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If you have any queries or comments regarding the contents of our submission, please contact me on (03) 9225 – 4021 or 0431 490 240 or by email fgalbraith@superannuation.asn.au.

Yours sincerely

Fiona Galbraith
Director, Policy