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Superannuation Tax Reform
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

superannuation@treasury.gov.au

Dear Sir/Madam

Superannuation Reform Package: Tranche 1 tax measures and contributions work test

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the following aspects of the exposure draft legislation and regulations released on 7 September 2016 as part of tranche 1 of the superannuation reforms announced in the 2016-17 Budget:

- Schedules 1 – 3 of the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016* (the Draft Bill)
- *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016* (the Draft Regulation).

This submission also considers the exposure draft *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016: low income superannuation tax offset*, released on 14 September 2016.

ASFA will comment separately on the exposure draft *Superannuation (Objective) Bill 2016* and associated amendments in Schedule 4 of the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016*.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system so people can live in retirement with increasing prosperity. We focus on the issues that affect the entire superannuation system. 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 per cent of the 14 million Australians with superannuation.

**Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 – Schedule 1:
Deducting personal contributions**

ASFA welcomes the removal of the '10 per cent rule' from the rules governing the tax deductibility of personal superannuation contributions. Extending deductibility beyond the self-employed and substantially self-employed will enable more individuals to utilise – or fully utilise – their concessional contributions cap, and support adequacy of retirement incomes.

Paragraph 2.15 of the draft explanatory memorandum notes that, before the commencement of the amendment to the deductibility rules, certain defined benefit (DB) funds have been able to operate on the basis that no personal contributions could be deducted by members, and therefore that no personal contributions were subject to tax within the fund. Such funds would incur significant costs if required to restructure their rules and benefit calculations to allow members to elect that personal contributions be deductible. As a result, paragraph 2.17 of the draft explanatory memorandum notes that deductibility will be prevented for contributions to:

any State, Territory or private sector defined benefit superannuation funds that advise the Government they face similar difficulties and request to be included in this category to avoid incurring significant costs to restructure their scheme rules.

While ASFA supports the proposed exclusion of deductibility of personal contributions for such funds, the mechanism used to achieve that under proposed section 290-155 of the *Income Tax Assessment Act 1997* (ITAA 1997) raises a number of potential concerns:

1. While the draft explanatory memorandum refers to excluding deductibility for contributions to State, Territory and private sector DB funds in the context of discussing paragraph 290-155(1)(a), that paragraph is confined to Commonwealth public sector superannuation schemes and does not, on its current drafting, extend to State, Territory or private sector DB funds.

Such funds could, however, potentially be excluded through exercise of the regulation-making power in proposed paragraph 290-155(1)(c). That power refers to exclusion of “a superannuation fund of a kind prescribed by the regulations” and does not appear to require that those regulations specifically identify excluded funds by name.

2. It appears that the proposal to allow private sector (and non-Commonwealth public sector) DB funds to request exclusion of deductibility for personal contributions would apply on a whole-of-fund basis.

In practice, many DB funds are 'hybrid' funds which provide both defined and accumulation benefits. A large portion of the personal contributions received by such funds would be contributions made by accumulation members, and/or voluntary personal contributions made by DB members toward accumulation benefits. Such funds will already have mechanisms in place to ensure correct tax treatment of those contributions, but would potentially still face unreasonable cost or difficulty in extending deductibility in respect of contributions made by members with DB-only interests.

Rather than exclusion of deductibility on a whole-of-fund basis, it would in ASFA's view be preferable to permit DB funds to request that deductibility not apply to personal contributions that relate to a DB interest, or to specific categories of members with DB interests.

3. While it is likely that relatively few funds will seek (or qualify for) exclusion, proposed subsection 290-155(1) may create uncertainty about whether fund members' personal contributions qualify for deduction.

To provide certainty for members, ASFA considers it important that those funds which take advantage of the exclusion under proposed section 290-155 provide clear notification to their members regarding their excluded status. It would, in ASFA's view, be appropriate for such notification to occur at a number of points in time and through a variety of channels. In particular, disclosure would be appropriate:

- prior to 1 July 2017 (the intended commencement date for the amendments to the deductibility rules) or at the time of any later request for exclusion under proposed section 290-155
- in the fund's Product Disclosure Statement (including in any associated material incorporated by reference)
- in the fund's annual report to members
- on the fund's website, as part of the information provided about making personal contributions.

This will require amendment of a number of aspects of the fund disclosure regime set out in the *Corporations Regulations 2001*.

More generally, the removal of the 10 per cent rule will lead to an increase in members needing to lodge with their fund notification of their intent to claim a tax deduction for their personal contribution - the 'notice of intent' process required under section 290-170 of the ITAA 1997.

ASFA members report that individuals frequently experience difficulty with the notice of intent process. By removing the 10 per cent rule, the proposed reforms will eliminate the most significant current difficulty, as individuals will no longer be required to assess whether their income from employment or similar activities will fall below that threshold.

However, a number of the other existing difficulties with the process will remain – and, given the likely increase in volume of those claiming a deduction, will be magnified. These include difficulties that individuals experience in complying with the specific time limits on notification and errors in the amount notified (which are common in practice). In addition, some members find that their taxable income is not sufficient for them to benefit (or fully benefit) from a deduction in relation to a personal contribution, requiring a variation of the amount notified - provided that is permissible under section 290-180 of the ITAA 1997. In some cases, the outcomes can be quite adverse for the individuals concerned, and significant workflow is created for providers.

One potential solution to address these issues may be to consider providing the Taxation Commissioner with discretion to allow providers more flexibility to accept notices of intent, and variations of such notices, which may not strictly comply with the administrative/mechanical provisions set out in sections 290-170 and 290-180.

Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 – Schedule 2: Tax offsets for spouse contributions

ASFA supports the proposed increase in the income threshold for the spouse superannuation contribution offset. While the amount of the offset is modest, any measures which may encourage the making of additional contributions on behalf of lower income Australians are welcome.

Proposed new subsection 290-230(4A) of the ITAA 1997 states as follows:

(4A) You are not entitled to the *tax offset for an income year if your *spouse's *non-concessional contributions for the *financial year corresponding to the income year exceed your spouse's *non-concessional contributions cap for the financial year.

We note that the 2016-17 Budget proposed significant changes to the non-concessional contributions (NCC) cap arrangements. We understand from the announcement by the Treasurer and the Minister for Revenue and Financial Services on 15 September that these proposals have been revised. To ensure that proposed new subsection 290-230(4A) operates with sufficient clarity, it may, in ASFA's view, be necessary to review its drafting once the exposure draft legislation for the revised NCC cap arrangements has been released.

Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016, Schedule 3 and Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016: low income superannuation tax offset: Low income superannuation tax offset

ASFA welcomes the introduction of the low income tax offset (LISTO) to replace the low income superannuation contribution (LISC) from the 2017/18 income year.

While described as an 'offset', ASFA is pleased to note that LISTO is not a tax offset in the technical sense, but instead retains the payment mechanism that has applied for the LISC. In ASFA's view, payment of an eligible individual's LISTO entitlement to their superannuation fund as a form of government contribution is appropriate, and represents the most administratively efficient and cost effective mechanism.

Any technical concerns as to the nature of the LISTO payment – and the ability of superannuation funds to accept it on behalf of their members – should in our view be adequately addressed by proposed new section 12B in Part 2A of the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003*, which effectively provides that a reference to a Government co-contribution includes a reference to LISTO.

ASFA has not identified any technical issues with the amendments proposed in Schedule 3 of the Draft Bill.

The *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016: low income superannuation tax offset* proposes a new regulation 21B of the *Superannuation (Government Co-contribution for Low Income Earners) Regulation 2004*, to replace existing regulation 21B which relates to the LISC. ASFA notes that proposed sub-regulation 21B(2) refers, in a number of paragraphs, to “a low income superannuation tax offset **made** during” the quarter or the year (our emphasis). As the LISTO is in effect a Government payment rather than a true offset, it would in ASFA’s view be clearer if sub-regulation 21B(2) referred to either “a low income superannuation tax offset **paid** during” or “a low income superannuation tax offset **payment** made during” the quarter or the year (our emphasis).

The *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016: low income superannuation tax offset* also includes amendments to the information superannuation funds must provide in members’ periodic statements, to reflect the introduction of LISTO. The release of these consequential amendments to the *Corporations Regulations 2001* is appreciated, as it will enable superannuation providers to consider all relevant amendments – and the necessary changes to administration/registry systems, disclosure materials and staff operating procedures – as part of a comprehensive and efficient change management process.

ASFA strongly recommends that for all future tranches of the superannuation reform package, any consequential amendments to regulations are released at the same time as the exposure draft legislation.

Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016 – Schedule 1: Amendments relating to harmonising contribution restrictions

ASFA notes the announcement by the Treasurer and the Minister for Revenue and Financial Services on 15 September that this measure will now not proceed.

If you have any queries or comments in relation to the content of our submission, please contact Julia Stannard, on 03 9225 4027 or by email: jstannard@superannuation.asn.au.

Yours sincerely

Glen McCrea
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