The Association of Superannuation Funds of Australia Limited
ABN 29 002 786 290
ASFA Secretariat
PO Box 1485, Sydney NSW 2001
p: 02 9264 9300 (1800 812 798 outside Sydney)
f: 02 9264 8824
w: www.superannuation.asn.au

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Proposed *Sustaining the Superannuation Contribution Concession (Meaning of End Benefit) Instrument 2013*

ASFA's submission on the proposed *Sustaining the Superannuation Contribution Concession (Meaning of End Benefit) Instrument 2013* noted that the purpose of the draft Instrument is to ensure that payments that do not result in the final determination of the member's defined benefit interest do not trigger the payment of the member's debt account. In this context, the specification of benefits that are not 'end benefits' for Division 293 tax purposes requires careful consideration, as it has the potential to create inconsistencies and/or the indefinite deferral of a member's debt account discharge liability, causing uncertainty.

ASFA raised concerns that:

- The proposed Division 293 tax regime does not appear to address the treatment of a member's debt account discharge liability in cases where no end benefit is paid from the defined benefit interest, causing significant uncertainty;
- The unqualified specification of 'family law superannuation payments' as benefits that are not end benefits ("excluded benefits") appears to result in the indefinite deferral of the member's debt account discharge liability where their entire defined benefit interest is paid or transferred to their non-member spouse;
- The specification of permanent incapacity benefits as excluded benefits appears to be a drafting error. Its inclusion raises questions about the non-specification of temporary incapacity and terminal medical condition benefits and appears to create inconsistencies in the overall tax treatment of members suffering serious incapacity or illness;
- There appears to be scope to specify Departing Australia Superannuation Payments as an excluded benefit, which would simplify the application of the Division 293 tax to departed temporary residents;
- The title of the draft Instrument does not relate to the legislation under which it will be made. This will make it difficult for trustees and advisers to locate.