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File Name: 2012/23

12 March 2012

The Secretary
House of Representatives Standing Committee on Economics
PO Box 6021
Parliament House
Canberra ACT 2600
Australia

Email: economics.reps@aph.gov.au

Dear Committee Secretary,

REVIEW OF THE TAX AND SUPERANNUATION LAWS AMENDMENT (2012 MEASURES NO.1) BILL 2012

The Association of Superannuation Funds of Australia would like to provide this brief submission to the Committee's review of the Tax and Superannuation Laws Amendment (2012 Measures No.1) Bill 2012. We note the purpose of the review is to examine the adequacy of the Bills in achieving the policy objective and where possible identify any unintended consequences..

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. 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.

Our interest in the bill

ASFA has an interest in the following parts of the Bill:

- Schedule 3 – Indexation of superannuation concessional contributions caps
- Schedule 4 – refund of excess concessional contributions
- Schedule 5 – Disclosure of superannuation information
- Schedule 6 – giving information about superannuation contributions

Schedule 3 – Indexation of superannuation concessional contributions caps

When the current contribution arrangements were introduced under the Simpler Super rules in the operated from 1 July 2007, a cornerstone of the contribution caps was their indexation to Average Weekly ordinary Time Earnings (AWOTE) in increments of \$5,000. Had the existing rules prevailed the current contribution cap would be \$60,000.

Since 2007, the \$50,000 cap has been halved to \$25,000 and indexation arrangements recommenced with each change. This latest deferral in the index arrangements to movements in

AWOTE from the 2013-14 year means that it will most likely be 2019-20 before the contribution cap is increased from \$25,000 to \$30,000.

We note that these changes have been made in the budgetary context and request that the contribution caps be reviewed with a view to increasing them as soon as the budget situation permits.

That said, ASFA considers that the legislation as tabled will achieve its objective.

Schedule 4 – refund of excess concessional contributions

The operation of the excess concessional contribution rules has been a source of frustration for individuals who seek to maximise their entitlement to contribute to superannuation.

Many people are caught under the rules due to a lack of detailed knowledge of the timing and amount of contributions made on their behalf.

This measure is an attempt to address this issue by permitting an individual to exercise a ‘once-off’ entitlement to have excess contributions of up to \$10,000 removed from the superannuation fund and included in assessable income.

ASFA is supportive of the proposed administrative arrangements and considers that the legislation as tabled will be effective in achieving its stated goal of providing an opportunity for an individual to recover from an inadvertent error in the amount of concessional contributions made for them or on their behalf.

Separately, ASFA notes that due to the complex processing arrangements around determining excess contributions tax liabilities, by the time of notification of a breach the person may already be in breach again, or be in a position where a second breach of the rules is unavoidable. For this reason, ASFA considers that it may be appropriate to undertake a fundamental review of the operation of the excess contribution tax rules. In particular we would seek a review of the, situations in which the Commissioner may exercise his discretion and the types of discretions available.

ASFA also notes that the incidence of excess concessional contributions is related to the relatively low level of permitted contributions (\$25,000 a year for most individuals).

In this context ASFA has suggested in its Pre-Budget Submission that the Government defer the introduction of a superannuation account cap for higher contributions for those aged 50 and over in order to allow consideration of the broader treatment of retirement income products and enable the Government’s superannuation reforms to be implemented. ASFA is concerned that implementing the Government’s \$500,000 account balance threshold will be borne by all superannuation fund members, including low-income earners, and that there may be another way to achieve the outcomes the Government is after.

ASFA’s preference is for a contribution cap of \$50,000. However, in the context of Government fiscal constraints, a contribution cap of \$35,000 is appropriate.

Schedule 5 – Disclosure of superannuation information

Schedule 5 proposes to amend the secrecy provisions in Division 355 of Schedule 1 to the *Taxation Administration Act 1953* and specifically to amend Part 5.1 of Chapter 5 to expand the list of exceptions under which the Commissioner of Taxation may disclose superannuation information.

ASFA supports the proposed legislative change as being in the interests of members of superannuation funds. We see this legislation as an essential piece of the infrastructure required for enabling and facilitating the consolidation of accounts as set out in the Government’s Stronger Super proposals. The legislation will also assist with reuniting members of superannuation entities with superannuation amounts held for their benefit by the ATO under the provisions of a range of superannuation related acts.

We also note and support the inclusion in the list of entities entitled to receive the information those entities that provide administration services to superannuation funds etc. Their inclusion will enable those entities to directly receive the information rather than it having to be first passed to the trustee of the fund, scheme or RSA. We acknowledge that, although they will receive the data directly, the administrator will only be able to use the data in their capacity as the administrator of the fund, scheme or RSA and for the purpose for which the data was provided.

ASFA considers that the legislation as tabled will be effective in meeting the objective for which it has been designed.

Schedule 6 – giving information about superannuation contributions

We note that the purpose of the Bill is to implement the first stage of the Government's Securing Super reforms with respect to the reporting on payslips of information about superannuation contributions.

We further note that this is to be achieved by transferring the reporting requirement from the Fair Work Regulations to the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and that by doing this it will enable the reporting requirement (and the reach of the Fair Work ombudsman) to be extended to a broader range of employers.

ASFA is supportive of the proposal.

Once fully implemented this measure should result in consistent payslip reporting of superannuation contributions by employers and extend coverage to a larger number of employees. Importantly, ASFA considers that the measure has the potential to improve both employer compliance with superannuation obligations and the employee engagement with the superannuation system.

ASFA recognises, and is slightly concerned, that following enactment of the legislation, an employer will need to access both the Fair Work Regulations and the SIS Act and regulations to determine their exact pay slip reporting requirements. ASFA suggests that this situation be addressed by including a note in Fair Work Regulation 3.46 outlining the additional requirement.

ASFA notes that the commencement date will be set by proclamation and that this is anticipated to be 1 January 2013. ASFA supports the flagged six month deferment. ASFA considers the deferment justified because:

- For some software providers there is insufficient time to make the necessary changes by 1 July;
- Current software users will be required to purchase a new compliant version of existing software;
- Those entities not currently caught by the Fair Work Regulation's requirements will need to be made aware of this new requirement and then implement the necessary changes within the required timeframe;
- Those employers with in-house custom payroll systems will first need to identify the need to change and then implement a solution in the required time frame.

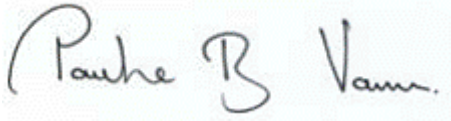
The complexity of the change required is increased due to differing legislative requirements on the payment of contributions. For some employers the system change may need to accommodate for three expected payment dates: one each for superannuation guarantee contributions, salary sacrifice/additional employer contributions and personal contributions deducted from salary.

ASFA considers that the legislation as tabled will be effective in meeting the objective for which it has been designed.

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If you have any queries or comments regarding this please contact our Principal Policy Adviser Robert Hodge on (02) 8079 0806 or 0448 009 113 or by email to rhodge@superannuation.asn.au.

Yours sincerely

A handwritten signature in black ink that reads "Pauline B Vamos". The signature is written in a cursive style with a large initial 'P' and 'V'.

Pauline Vamos
Chief Executive Officer