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Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir/ Madam

Inquiry into Tax Laws Amendment (2009 Measures No. 6) Bill 2009

We refer to your inquiry into the Tax Laws Amendment (2009 Measures No. 6) Bill 2009 ("Bill").

Our comments below relate only to Schedule 2 of the Bill which contains amendments that will remove potential impediments to superannuation fund consolidation by allowing eligible entities to roll over capital and revenue losses and transfer previously realised losses when merging. We understand that these measures will have retrospective effect from 24 December 2008 and may be applied until 30 June 2011.

ING Australia (INGA) has recently completed a substantial successor fund transfer of members from one complying superannuation fund to another complying fund. We are also currently negotiating a number of similar transfers. For these reasons, we welcome the proposed relief and believe the provisions of the Bill should be passed in its current form as it should lead to greater efficiencies for superannuation funds, and deliver better retirement savings outcomes for fund members.

INGA is one of Australia's leading fund managers, life insurers and superannuation providers. We are wholly owned by the Australia and New Zealand Banking Group Limited (ANZ). ANZ is one of the ten largest and most successful companies in Australia and the number one bank in New Zealand. It employs more than 44,000 staff and operates in more than 30 countries.

Background

In November 2008, INGA took up trusteeship of a complying superannuation fund with the aim of upgrading the features of the fund by merging it into an existing ING fund. The newly acquired fund had 21,000 existing members, it was a relatively small fund valued at approximately $1 billion, which meant there were few incentives for the previous trustee to invest in greater efficiencies or to enhance member benefits.

We believe that merging the acquired fund into the ING fund will benefit members given our membership is still growing. For instance, members have already benefited from:

- economies of scale – belonging to a larger fund has enabled life premiums to be negotiated down, along with improved life policy terms, for example the multiples of death benefits have increased for some;
- a strong investment manager selection process – members will benefit from INGA's strong controls and expert selection process of investment managers;
- competitive fees – member fees were likely to go up under the predecessor fund given its relatively small size, fees have been maintained at their existing level under the ING fund and in some cases, negotiated down;

- improved support to members and employers – members have the benefit of online access to their account balance, educational material and employers have the benefit of INGA's user friendly payment facility; and
- enhanced product features – in addition to those mentioned above, members have access to greater choice at no extra cost.

The ING fund was, moreover, subjected to a competitive tendering process managed through an independent tender manager appointed by the trustee of the predecessor fund. Most of the benefits mentioned above were subjected to rigorous scrutiny against competitors. Without the tax relief as contemplated under the Bill, many trustees may be reluctant to bid for new business and to merge. Accordingly, with appropriate competition, we are of the view that the tax measure will enhance the efficiency and robustness of the superannuation system.

Why relief is required?

It is the practice of fund trustees to incorporate into the value of each member's account a proportion of the current value of past tax losses. This ensures equity between current and future members. Under current tax law, should the incumbent trustee wish to proceed with a successor fund transfer, any net taxable losses at the date of member transfer are extinguished – causing the "deferred tax" component of member balances to be written off.

In the absence of an equivalent cash injection, the member transfer would not meet the SIS equivalent rights and member best interests test. Thus, members are effectively locked into the present structure until such time as past tax losses are substantially utilised.

This limited roll-over relief will assist those superannuation funds in a net taxable loss position seeking to merge with other funds by preserving the offsetting value of the net taxable loss.

The relief will also assist those successor funds that invest exclusively via a group master life insurance policy such as the one issued by ING Life Limited – a wholly-owned ING subsidiary. All of the financial governance and control aspects in relation to superannuation monies take place within the life company, including unit pricing, investment accounting, fund accounting, asset custody and regulatory reporting. We therefore strongly support the features of the Bill that extends the proposed relief to life company structures.

Government Policy

ING Australia supports the Federal Government's moves to minimise potential barriers to a robust and efficient superannuation industry (para 2.8, Explanatory Memorandum). Industry consolidation supports improving economies of scale and enables more efficient provision of services to members. We ask that the Committee support the amendment Bill as it relates to superannuation fund mergers.

If you would like further information please do not hesitate to contact me on 02 9234 8837 or alternatively you can contact Allan Hansell ING Australia's Senior Manager for Government and Regulatory Affairs on 0401 691777 or by email at allan.hansell@ing.com.au

Yours sincerely

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