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the voice of super

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Manager
Benefits and Regulation Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: strongersuper@treasury.gov.au

Dear Sir/Madam,

Thank you for the opportunity to comment on the exposure draft *Tax Laws Amendment (2013 Measures No. 1) Bill 2013: self-managed superannuation funds and related parties* that implements the Government's Stronger Super reforms relating to acquisitions and disposals of certain assets by SMSFs and related parties.

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 (SMSFs) and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General Comments

ASFA's position regarding the off market transfer of assets between SMSFs and related parties, where the buyer and seller can effectively be the same person, is that the ability to do so lacks transparency and potentially is open to manipulated outcomes as opposed to arm's length transactions.

The implementation of the provisions in the exposure draft ASFA believes will add rigour to the process and act as a mitigation to the risk of transaction date and asset value manipulation to benefit the SMSF or a related party.

Whereas ASFA supports the general thrust of the exposure draft, we also recognise that a significant part of the finer detail has been left to the prescription of regulations that will occur at some point in the future. Nevertheless ASFA would like to make the following specific comments.

Specific Comments

1. In relation to the existing exemption that relates to widely held trusts in subsection 66(2A)(a)(iv) – ASFA recommends that the Government confirm that a unit price published by a registered managed investment scheme operator is sufficient to satisfy the requirement for the units in the scheme to be valued by a qualified independent valuer when being acquired from a related party of the fund, as per proposed subsection 66A(3)(d).

2. The new subsection 66B(3) contemplates that assets can be disposed of by a fund trustee to related parties for market value. In the interests of clarity, ASFA recommends that the explanatory memorandum should specifically state that this could include an in-specie transfer of that asset in consideration of the payment of a benefit from the fund and that provided that the benefit consideration is equal to the market value of the asset, then such an in-specie transfer will satisfy the exemption in subsections 66A(3) and 66B(3).

3. Given the additional safeguards that would be introduced by using a qualified independent valuer, ASFA suggests that there are additional classes of assets where acquisitions from related parties could be permitted without increased system integrity risk. Those assets are:
   a. Shares in unlisted unrelated public companies, and
   b. Unlisted fixed interest type securities issued by listed companies, unlisted public companies, governments and government authorities.

4. ASFA recommends that clarification be provided that a change in trustees – where the trustee is not incorporated – is not impacted by the exposure draft insofar as the change on its own does not trigger an acquisition or disposal of an asset.

5. The prohibition on disposing of an asset to a related party of an SMSF does not apply if the asset is disposed of in accordance with subsections 66(2B) and 66(2C), which has regard to the breakdown of relationships. The whole thrust of the amendments are that a valuation from a ‘qualified independent valuer’ must be obtained where a disposal occurs off market. However in regards to a disposal where a relationship breakdown is the cause of the disposal a valuation is not necessary. AFSA supports this initiative as clearly there will be independent valuation processes in place as part of the procedure associated with the splitting of assets under such circumstances.

6. The definition of the term ‘qualified independent valuer’ is only found in the explanatory memorandum at paragraphs 1.30 and 1.31. ASFA recommends that the definition be included in the Section 66(5) of the *Superannuation Industry (Supervision) Act 1993*.

7. Whereas the details of how a fund can acquire or dispose of an asset that is a listed security to a related party will be left to the regulations, ASFA encourages Treasury to consider the issues of dealing with small parcels of shares on-market. As Treasury would be aware, small parcels are not tradeable on-market. Where such assets exist, SMSF trustees will need a process whereby these small parcels can be disposed of. An unintended consequence of any hard and fast rule here maybe that SMSFs seeking to wind up may not.

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If you have any queries or comments regarding the contents of our submission, please contact Tony Keir on (02) 8079 0815 or via e-mail tkeir@superannuation.asn.au.

Yours sincerely
Fiona Galbraith

Acting General Manager, Policy and Industry Practice