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Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Dr Grant,

## **TAX AND SUPERANNUATION LAWS AMENDMENT (2013 MEASURES NO. 1) BILL 2013**

Thank you for the opportunity to provide comment in relation to the *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Bill 2013* ("Bill").

### **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.

### **The Bill**

#### **1) Schedule 1 - Unclaimed Monies**

ASFA strongly supports the payment of interest in relation to unclaimed moneys. This will have the effect of preserving the real value of the unclaimed money. Given this objective, we support the rate of interest being linked to the Consumer Price Index.

This is especially the case in light of the fact that the 2012-13 MYEFO reforms, in widening the circumstances in which money is considered to be unclaimed money, generally have resulted in “bringing forward” the time at which money is recognised as unclaimed. Had this money remained in the superannuation fund, invested at market, then over time the earnings on this money (apart from very small amounts) tend to exceed fees and charges and, accordingly, the amount of money grows. This is particularly the case in superannuation where – currently – the member protection operating standard in the *Superannuation Industry (Supervision) Regulations 1994* ensure that the amount of fees and charges levied cannot exceed the amount of earning credited (other than in periods of small and negative returns, where the fees are capped at \$10). These regulations are being amended to abolish member benefit protection with effect from 1 July 2013.

ASFA also supports the position that tax not be payable on interest paid by the Commonwealth in relation to unclaimed money reclaimed from 1 July 2013, as this would be inconsistent with the objective of ensuring the real value of unclaimed money is preserved. We agree with treating the payment of interest as a tax free component of a superannuation benefit, which is treated as non-assessable non-exempt income.

## **2) Schedule 4 – Self managed superannuation funds and related parties**

In relation to the existing exemption in subsection 66(2A)(a)(iv) which relates to widely held trusts – proposed paragraph 66A(3)(d) would appear to require the units in the scheme to be valued by a qualified independent valuer when being acquired from a related party of the fund. ASFA recommends that a legislative instrument made under paragraph 66A(3)(g) which confirms that – with respect to widely held trusts - 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.

The new subsection 66B(3) contemplates that an asset can be disposed of by a fund trustee to a related party for market value. ASFA recommends that this be expanded to include an in-specie transfer of that asset to a member in consideration for the payment of a benefit from the fund, provided that the amount of the benefit paid is equal to the market value of the asset transferred.

Given that a significant safeguard to ensuring that transactions are conducted in an arms’ length basis have been introduced with the obligation to use a qualified independent valuer, ASFA suggests that there could now be additional classes of assets where acquisitions from or disposals to related parties could be permitted without material systemic integrity risk. Those assets could include, amongst other things: -

- shares in unrelated unlisted public companies; and
- unlisted fixed interest type securities issued by listed public companies, unlisted public companies, governments and government authorities, such as debentures and bonds.

ASFA recommends that an equivalent to proposed new paragraph 66B(3)(e) be inserted into section 66A to ensure that an acquisition from a member as a result a change in individual trustees is not prohibited.

There is no definition of the term “qualified independent valuer” in the *Superannuation Industry (Supervision) Act 1993* (the “SIS” Act). The Explanatory Memorandum at paragraph 4.27 on page 63 explains what is considered to be a qualified independent valuer. ASFA recommends that a definition be inserted into sub-section 66(5) of the SIS Act.

While we appreciate that the details as to how a fund can acquire or dispose a listed security from or to a related party will be left to the regulations, ASFA encourages Treasury when drafting the regulations to consider the issue of dealing with small parcels of shares which are not tradeable on-market. SMSF trustees will need a process whereby these small parcels of shares can be acquired or disposed of efficiently.

Yours sincerely

Fiona Galbraith  
Director, Policy