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File Name: 2011/51

26 October 2011

Committee Secretary
Standing Committee on Economics
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Email: economics.reps@aph.gov.au

Dear Sir \ Madam,

INQUIRY INTO THE TAX LAWS AMENDMENT (2011 MEASURES NO. 8) BILL 2011 AND THE PAY AS YOU GO WITHHOLDING NON-COMPLIANCE TAX BILL 2011

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in relation to the inquiry into the *Tax Laws Amendment (2011 Measures No. 8) Bill 2011* ("Tax Bill") and the *Pay As You Go Withholding Non-compliance Tax Bill 2011* ("PAYG Bill"), collectively referred to as the Bills. Our comments relate specifically to the provisions dealing with Superannuation Guarantee obligations.

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.

ASFA strongly supports the strengthening of directors' obligations to cause their company to comply Superannuation Guarantee requirements. Reducing the scope for directors to engage in phoenix activity in order to escape the payment of employee entitlements is to be commended. The Bills will reduce the scope for such activity through both imposing additional obligations on directors and also permitting speedy Australian Taxation Office (ATO) intervention before a company goes into liquidation.

A specific comment on the Bills is in the attached annexure.

That said, the measures are reliant on the existence and discovery of assets which can be used to satisfy the liability. Where no such assets exist then the measure will not lead to payment of superannuation and other employee entitlements.

There are generally high levels of voluntary compliance by employers with their superannuation guarantee obligations. ATO and Australian Prudential Regulation Authority data indicates that employer contributions have been increasing and significantly exceed 9% of total salary and wages. Contributions in 2008-09 totalled \$71.1 billion, up \$3.2 billion on 2007-08.

However, in 2009-10 the ATO reviewed the compliance of more than 20,000 employers and raised liabilities of approximately \$408 million in superannuation entitlements for around 203,000 employees. The ATO was not able to pursue \$82.2 million in superannuation entitlements because they were irrecoverable at law or it was not economical to do so.

While the measures in the Bill will make more superannuation entitlements recoverable in the future there will still be entitlements that the ATO will not be able to pursue because no assets are available.

Accordingly, it would be beneficial to accompany the legislation being considered with arrangements for payment of superannuation entitlements where no company or relevant director assets are available. Such arrangements could incorporate the inclusion of compulsory employer superannuation contributions in the General Employee Entitlements and Redundancy Scheme ("GEERS"). GEERS was introduced to guarantee, up to a ceiling amount, the entitlements of employees who have lost their jobs as a result of a liquidator or trustee in bankruptcy being appointed to the employer company. Whilst GEERS covers most entitlements, it currently specifically excludes employer superannuation contributions.

Given the compulsory nature of our superannuation guarantee system, and that Superannuation Guarantee contributions in effect represent deferred salary and wage, ASFA considers that GEERS should be expanded to cover unpaid Superannuation Guarantee contributions.

If you have any queries or comments regarding the contents of our submission, please contact me on (02) 8079 0805 or by email pvamos@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'.

Pauline Vamos
Chief Executive Officer

ANNEXURE

1. Subsection 268-90(2A) in Schedule 1 to the TAA 1953

The Explanatory Memorandum states at 3.43 that: -

“The statutory declaration or affidavit must verify:

- the director’s name and address;*
- for each employee for which there is unpaid superannuation guarantee charge - their name and postal address, and if known, their tax file number; and*
- the amount of the superannuation guarantee shortfall”.*

We submit – in order to assist the ATO, and ultimately the superannuation fund, in identifying the affected employee – that, if known, the employee’s date of birth also be provided.