



The Voice of Super

File Name:

26 March 2004

The Secretary
Senate Economics Legislation Committee
Room SG.64
Parliament House
CANBERRA ACT 2600

Dear Secretary

Inquiry into New International Tax Arrangements Bill 2003

The Association of Superannuation Funds of Australia Ltd. (ASFA) makes this submission to the Senate Economics Legislation Committee's inquiry into the New International Tax Arrangements Bill 2003 (NITA Bill).

In reference to the Inquiry's primary term of reference, ASFA supports the increase from 5% to 10 % in the "balanced portfolio exemption threshold", as that is not an unreasonable concession in the managed funds environment.

ASFA welcomes the opportunity the Inquiry provides to comment on an issue which limits the scope and effectiveness of the proposed new Division 11A of the Income Tax Assessment Act 1936.

Division 11A (Exemption for virtual PST assets, segregated exempt assets and interests held by complying superannuation entities etc.)

Division 11A has the objective (among others) of removing complying superannuation entities from the Foreign Investment Fund (FIF) rules contained in Part XI of the Income Tax Assessment Act (1936). ASFA supports this change to the FIF rules.

The exemption from the FIF rules is contained in the proposed new Section 519B in Schedule 8 of the NITA Bill. The exemption is straightforward where a complying superannuation entity invests directly in a FIF. However the nature of the superannuation industry is that a lot of superannuation funds invest indirectly in offshore equities via wholesale managed funds. This is catered for, to a certain extent, by the proposed new Section 519B which also contains an exemption from the FIF rules for fixed trusts where each fixed entitlement to income and capital:

- is held by the trustee of a complying superannuation entity;
- is a virtual PST asset; or

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- is a segregated exempt asset of a life insurance company.

There is also a limited concession which allows the FIF exemption to continue for such a trust where a complying superannuation entity becomes non-complying.

For the provision to be fully effective in achieving its goal of administrative efficiencies it is suggested that amendments be made to allow tracing through tiers of fixed trusts, each wholly owned by the specified class of eligible investors and to extend the class of eligible investors to tax exempt government bodies.

Each of these matters, together with some proposed minor amendments to the bill to achieve these changes, are discussed below:

1. Allow Tracing Through Tiers of Trusts

It seems reasonable that where superannuation funds (or other eligible investors) hold all the fixed entitlements in a head trust that the exemption should apply to a subsidiary trust in which the head trust holds all the fixed entitlements. It is not clear whether this was intended in Section 519B(3)(b)(iv) where it refers to 'interposed fixed trust within the meaning of this subsection' as an eligible investor.

In particular the Explanatory Memorandum does not indicate that this was envisaged as the only interposed trust example it discusses is the limited concession for fixed trusts which were previously complying superannuation funds.

We submit the Section 519B contained in the NITA Bill be rewritten to allow for the tracing through fixed trusts for all classes of eligible investors. As a minimum, we request an amendment along the following lines which would at least allow tracing through fixed trusts to complying superannuation entities:

In subparagraphs (iii) and (iv) of paragraph (b) of subsection (3) of Section 519B, insert the words "directly or indirectly" after the words "it is held"

2. Add Exempt Government bodies to the class of eligible beneficiaries

It also seems reasonable to add tax exempt government bodies to the class of eligible beneficiaries in a trust entitled to the FIF exemption. This is suggested on two grounds:

- a) It is not uncommon for exempt public sector super schemes (EPSS) to be co-invested with government monies, and
- b) As these entities are tax exempt there should be no loss of revenue.

Extension of the exemption to these entities could be achieved by way of the following simple amendment to Section 519B:

After subparagraph (iv) of paragraph (b) of subsection (3) of Section 519B, insert "(v) it is held directly or indirectly by a government, or an authority of a government, that is not liable to income tax;"

If you have any questions or comments on the items raised in this submission, please feel free to contact Robert Hodge on 02 9264 9300.

Yours sincerely,

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Director Policy and Research