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**Inquiry into Temporary Residents' Superannuation Legislation Amendment Bill 2008  
and the Superannuation (Departing Australia Superannuation Payments Tax)  
Amendment Bill 2008**

The Association of Superannuation Funds of Australia Ltd (ASFA) is pleased to make this submission to the Senate Economics Committee Inquiry into the Provisions of the *Temporary Residents' Superannuation Legislation Amendment Bill 2008* and the *Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008*. These bills were introduced into Parliament on 25 September December 2008 and implement the Government's Policy announcement.

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. Our members, which include corporate, public sector, industry and retail superannuation funds, account for more than 5.7 million member accounts and over 80% of superannuation savings.

**1. General Comments on the Temporary Residents measure**

In May 2008 the Government released a discussion paper on this measure and called for comments. ASFA responded to the paper raising concerns at the proposed administrative arrangements. In August the Government responded to comments and announced a final policy that resolved the majority of the administrative and equity issues identified by ASFA.

ASFA supports the payment of temporary residents' account monies to the ATO as it will facilitate the removal of these accounts from the lost members register and permit the Australian Taxation Office (ATO) to concentrate its efforts on the lost accounts that belong to Australian Residents.

However, ASFA still has three concerns:

- the timing of implementation,

- liquidity issues for some superannuation funds, and
- the fiscal impact on temporary residents who have salary sacrificed into superannuation.

## 2. Remaining Concerns

### 2.1 The timing of implementation

ASFA members have considerable concerns about their capacity to meet the proposed lodgement date of 30 April 2009 and the additional costs that will be incurred by the superannuation industry should they be required to meet an April 2009 lodgment date.

In announcing the outcome of consultations, the Government announced that the ATO would administer this measure through the unclaimed monies reporting arrangements. However, the simplicity of this statement hides some significant facts:

- The unclaimed monies reporting arrangements to be used are the **new** arrangements the ATO is implementing in respect of unclaimed monies reports due for lodgment by 31 October 2009. The unclaimed monies reporting arrangements to be used in April 2009 are transitional arrangements. Generally the April 2009 lodgment will be done by way of spreadsheets.

For funds, this means there will be three versions of reporting arrangements to be used next year: Temporary residents arrangements for 30 April, existing unclaimed monies arrangements for 30 April and combined unclaimed monies and temporary residents arrangements for 31 October 2009. The result is additional costs for funds as they bring forward their IT development schedule for the new unclaimed monies reporting system by some 6 months.

- The unclaimed monies legislation requires the fund to self-select unclaimed monies cases for reporting. In contrast, for the temporary residents measure the ATO will provide the fund with a list of temporary residents. The fund must then process these cases against its membership data base before confirming cases for reporting.

To achieve this, funds are required to develop administrative and IT processes to validate cases selected by the ATO and to resolve uncertainties. It is expected that a considerable number of these cases will reside on legacy systems, making the use of IT solutions more difficult to implement, particularly in a short time-frame.

- The development of IT solutions required fund trustees to expend trust monies. Trustees have a fiduciary responsibility towards fund members and as such should only authorise expenditure that is necessary for the administration of the trust.

In the absence of legislation, many fund trustees are unwilling/unable to authorise the expenditure of trust monies on the development of the temporary resident processes.

This is an ongoing issue for superannuation funds and is a significant part of the superannuation industry's long held position significant new measures should have a date of effect that is no earlier than 12 months following the granting of Royal Assent. Lead times for superannuation funds are greater than for entities who are able, or willing, to risk

manage expenditure on proposed measures that may not eventually be passed by parliament.

In summary, whilst the ATO intends to leverage off the unclaimed monies reporting arrangements, to do so requires bringing forward the previously announced implementation timetable by some 6 months and also requires superannuation funds and their administrators to develop additional processes, all in the absence of legislation. This involves both significant financial risk and significant additional cost.

Critically, for many funds the first report from the ATO will be the biggest they ever deliver. ASFA understands that as many as 3 million individuals may be caught by the Policy. To process such large numbers, funds and their administrators will be required to develop automated processes. This is not a simple or quick process. Significantly, funds have advised ASFA that existing internal administration processes cannot be utilised for exiting their temporary resident members as the underlying reason for exit is different and there is a different (zero) tax rate applied to these exits.

Compounding the problem is that for some funds and some systems, much of the information that the ATO will be requesting from funds is held in places other than the core registry systems. Extracting this data will require manual intervention. This is a costly process and the cost will be borne by the remaining members of the fund.

Information provided by ASFA members indicates that an April 2009 lodgment date, rather than say an April 2010 lodgment date, will result in the industry collectively incurring additional implementation costs in the tens of millions of dollars and possibly in excess of 100 million dollars.

ASFA suggests that, in an effort to minimise additional implementation costs to the industry, the commencement date should be deferred.

Deferring the first lodgment date to say 30 April 2010, would permit a more orderly implementation and would avoid the incurring of significant additional costs.

Importantly, there would be no loss of revenue to the Government, merely a delay in its collection.

### **Recommendation**

ASFA recommends that the measure have a commencement date of the first day after a period of twelve months from the granting of Royal Assent.

### **2.2 Liquidity issues for certain funds**

A further significant concern is the impact that implementation of the Policy will have on Eligible Rollover Funds (ERFs). An ERF is designed as a low cost product for administering lost and inactive accounts. In keeping with this, administration systems are simple.

By definition, the temporary resident accounts being targeted are inactive - the member has departed Australia and no contributions are being made. ASFA has reason to believe that a significant number of the temporary resident accounts being targeted are in ERFs.

There is a concern that, should a single ERF find that a large proportion of its members are identified as temporary residents, there may be significant issues associated with the need to redeem investments in a compressed timeframe in order to pay the identified account balances to the ATO.

Should a ‘fire sale’ of assets be required this will adversely impact on the value of the remaining members’ accounts.

Additionally, the sudden loss of a significant amount of money may ultimately affect the financial viability of the ERF.

When rolling over benefits to another superannuation entity, a superannuation fund trustee faced with liquidity issues may approach the Australian Prudential Regulation Authority (APRA) for relief.

Under Regulation 6.36 of the Superannuation Industry (Supervision) Act, APRA may suspend or vary the obligation of the trustee to roll over or transfer a benefit within 30 days where APRA believes that the rollover or transfer would have a significant adverse effect on the financial position of the fund or the interests of other members of the fund.

Regulation 6.36 does not extend to the payment of unclaimed monies.

### **Recommendation**

ASFA recommends that, given the potential large number of members and money involved in the initial transfer of temporary residents benefits to the ATO, a provision similar to SIS Reg 6.36 be included in the *Superannuation (Unclaimed money and Lost Members) Act*.

### **2.3 Temporary residents who have salary sacrificed into super**

The temporary residents measure is targeted at ‘lost accounts’, and specifically the accounts of people only in Australia for short periods of time and only in receipt of superannuation guarantee entitlements.

However, ASFA understands that there is a group of temporary residents who have contributed additional money to superannuation with the intention of leaving it within the Australian system until they have met a condition of release other than the Departing Australia Superannuation Payment (DASP) condition of release. This course of action was planned under current legislation and in many cases with financial advice.

Under the bill, these people may only withdraw their benefits under the DASP provisions. The outcome of the change is an imposition of tax that is substantially more than was their original reasonable expectation. With the increase in the DASP tax rate to 35%, the effective tax rate of a flat 50% (15% contributions tax plus 35% DASP tax) exceeds the maximum tax payable had they taken cash salary and not contributed the money to super.

As there is no opportunity for these people to undo their previous actions, the effect of the change is the imposition of a retrospective tax.

Australian Governments have a long history of not introducing retrospective taxation. The introduction of capital gains tax is but one example.

Within the superannuation/social security framework, the grand-fathering of existing favourable arrangements has also been a feature of new measures. This principle has been amply demonstrated in the changes to the asset test exemption for superannuation pensions.

Although this will only affect a small number of cases, the sums involved for each individual could be substantial.

### **Recommendation**

ASFA recommends that consideration be given to the inclusion of a provision that would permit affected individuals to seek relief from the Commissioner.

## **2.4 Other issues**

### ***Commencement date of DASP rate change***

The legislation proposes that the rate of DASP tax applied to a benefit be determined by the lodgment date of the request for payment. ASFA considers that the increase in the DASP tax rates should apply to all payments made by a superannuation provider from a fixed date. To do otherwise would unnecessarily complicate the administration process for a significant number of funds affected by this measure.

### **Recommendation**

ASFA recommends that the new rates apply to payments made from 1 July 2009.

### ***Calculation time***

Sub section 20F(2) requires a fund to determine the amount payable to the ATO as if a payment had been made on the date that payment is due to the ATO (the *calculation time*).

Due to the volume of payments to be made, particularly in the initial lodgment run, it is considered impossible for these calculations to all be done on a single date. This is particularly so if manual processes are employed.

### **Recommendation**

ASFA recommends that the law be amended such that *calculation time* is defined as:

The day within the 28 day period preceding the date on which payment is due (or made if paid early) on which the benefit calculation is made.

### ***Scheduled statement days***

Section 20B grants the Commissioner the power to set lodgment dates for statements by legislative instrument.

In comparison, Section 16 of the *Superannuation (Unclaimed money and Lost Members) Act* specifies that unclaimed monies statements must be lodged by 1 May and 1 November for the relevant half yearly periods.

Set lodgment dates would provide certainty for both the industry and the Commissioner.

### **Recommendation**

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ASFA recommends that the lodgment dates for payment of temporary residents superannuation be set at 1 May and 1 November.

### ***Payment of death benefits***

Where the temporary resident dies after their benefit has been paid to the Commissioner, Section 20H requires the Commissioner to pay a death benefit to the beneficiaries (if the Commissioner has this information) or to the person's legal personal representative.

It is arguable that such claims will be small in number. However, to provide for such an eventuality, the ATO will require from funds all details that are held about the temporary resident's beneficiaries. The collection and reporting of this information will impose a considerable cost burden on some funds.

Given the very small likelihood of the event occurring, and the opportunity that the temporary resident has to withdraw their benefit prior to it being transferred to the ATO, ASFA considers that a more appropriate provision would be to require the Commissioner to pay the benefit to the temporary resident's legal personal representative.

### **Recommendation**

ASFA recommends that, in the interest of simplicity and administrative efficiency, subsections 20H (3) and (4) of the bill be removed.

If you have any questions or comments on this submission, please feel free to contact Robert Hodge, Principal Policy Adviser at the ASFA Secretariat on 02 9264 9300.

ASFA is prepared to appear before the Committee.

Yours sincerely,

Melinda Howes  
Director Policy and Industry Practice