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General Manager  
Business Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [cgt\\_minoramendments@treasury.gov.au](mailto:cgt_minoramendments@treasury.gov.au)

Dear Sir/Madam,

### **Proposals Paper – Minor Amendments to the Capital Gains Tax Law**

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in relation to the above proposals paper and specifically to the part of the measure which impacts superannuation funds:

- 2.2 CGT Exemption for certain insurance policies owned by a complying superannuation entity

#### **About ASFA**

ASFA is a non-profit, politically non-aligned 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**

The proposed amendments are a welcome clarification to the CGT status of life insurance policies held within a superannuation fund. As Item 5 of Section 118-300 of the *Income Tax Assessment Act 1997* at present only specifically applies to death claims, there has always been debate about the tax status of total permanent disability claim proceeds and income protection claim proceeds. Under the Proposal, the definition of life insurance would be expanded to match the definition contained in the Life Insurance Act plus some expansion to accommodate short term disability policies.

However, one area that is still the subject of some uncertainty is the capital/revenue status of the claim proceeds. This issue is dealt with separately later in this submission.

## **Comments on section 2.2**

Section 2.2 of the paper deals with the CGT exemption for certain insurance policies owned by a complying superannuation entity.

As set out in the paper the proposed amendment is designed to implement the 2011-12 Budget announcement that the CGT exemptions available to complying superannuation entities for annuity instruments, certain compensation and damages payments, and policies of insurance on the life of an individual would be consolidated into one broad CGT exemption.

At the time it was proposed that this would be achieved by expanding item 5 of the table in subsection 118-300(1) to cover life insurance policies more generally (as defined by the *Life Insurance Act 1995*).

However, at the time, the superannuation industry considered that the proposal to replace the current requirement of using both subsection 118-37(1) (in conjunction with TD 14) for compensation and damages cases and subsection 118-300(1) for policies of insurance on the life of an individual and annuity instruments would create an exemption that was too narrow in its scope due to its lack of coverage for a range of insurance policies that complying superannuation entities currently treat as being CGT exempt by relying on ATO administrative practice.

The current paper proposes to address this issue by ensuring that insurance policies that were treated as being CGT exempt prior to the 2011-12 Budget changes continue to be CGT exempt for complying superannuation entities, with effect for CGT events happening in the 2005-06 and later income years. The effect of this is that taxpayers that could have relied on the ATO administrative practice will not be disadvantaged by this change.

Members of the ASFA Tax Policy Sub-committee have reviewed the proposal and are supportive of the proposal as set out in section 2.2 of the paper.

## **Uncertainty over the capital/revenue status of insurance claim proceeds.**

Insurance policy claim proceeds within superannuation are generally accepted as being capital in nature on the basis that CGT is the primary code for calculating gains and losses in a superannuation fund (Section 295-85). The operation of this provision is modified by sub-section 295-85(3) which contains exceptions to the primary code rule. The exceptions include items such as debt instruments. Section 295-85(3)(b)(iv) is a catch-all exclusion which states “some other contract under which an entity is liable to pay an amount (whether the liability is secured or not)”.

It has been argued that insurance contracts could be brought under this exclusion, and therefore be taxed as revenue items. Such an interpretation would render the Section 118-300 exemption ineffective for superannuation funds. To avoid any doubt as to the intention of the proposed changes, ASFA seeks the insertion of an exclusion for life insurance contracts in Section 295-85(3)(b)(iv) to remove this doubt. This ‘tidy-up’ would ensure that the claim proceeds are treated as capital items under Section 295-85, and are exempt under Item 5 of Section 118-300. Any tax which may be payable would be levied on the member or beneficiary receiving the funds.

\* \* \* \*

ASFA would like to thank the Government for giving due consideration to the concerns raised and delivering an appropriate outcome and would appreciate due consideration being given to the above concerns regarding the operation of the exclusion in sub-section 295-85(3)

If you have any queries or comments regarding the contents of our submission, please contact Robert Hodge, Principal Policy Adviser by email [rhodge@superannuation.asn.au](mailto:rhodge@superannuation.asn.au) or by phone on (02) 8079 0806.

Yours sincerely  
Margaret Stewart

A handwritten signature in black ink, appearing to read 'M Stewart', written in a cursive style.

General Manager, Policy and Industry Practice