

24 October 2014

Manager  
Small Business and Indirect Taxes Unit  
Small Business Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [TaxLawDesign@treasury.gov.au](mailto:TaxLawDesign@treasury.gov.au)

Dear Sir/Madam

**RE : CAPITAL GAINS TAX EXEMPTION FOR COMPENSATION AND INSURANCE**

The Financial Services Council welcomes the opportunity to provide our response to Exposure Draft: Tax and Superannuation Laws Amendment Bill: CGT exemption for compensation and insurance.

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than \$2.3 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

The FSC welcomes and supports the provisions outlined in the Exposure Draft. These provisions provide welcome statutory authority confirming the tax exempt status of life insurance claim proceeds received by trustees of regulated superannuation funds. The provisions also provide authority for claims proceeds flowing through trust structures to beneficiaries and their relatives retaining their tax exempt status.

The FSC suggests one minor modification to Paragraph 7 of the Exposure Draft. The FSC submits that Paragraph 7 should simply provide for the repeal of Table Item 10 of Subsection 295-85(4) of the Income Tax Assessment Act 1997. The reasons for this suggestion are detailed in the following paragraphs.

- Paragraph 7 of the Exposure Draft provides for amending Subsection 295-85(4) by the repeal of Table Item 10 and substituting it for "Subsection 118-300(1) Insurance policies other than item 7 in that subsection."
- Paragraph 1.23 of The Explanatory Memorandum describes this measure as a consequential amendment to Subsection 295-85(4) to ensure that these types of policies are not subject to treatment on revenue account "This reflects that taxpayers have accounted for such capital gains tax and capital losses from these policies on the basis that all gains and losses from these policies are taxed under the CGT primary code rule."

- Subsection 295-85 provides that CGT is the primary code for calculating gains or losses of a regulated superannuation fund. Subsection 295-85(4) limits the operation of this general principle by providing that gains or losses can be taxed on revenue account in exceptional circumstances. The situations where it is possible to tax gains/losses on revenue account are specified in an accompanying Table. Item 10 of the Table refers to insurance policies which are exempt under Section 118-300. Therefore, the Legislation in its present form envisages that life insurance policies within a regulated superannuation fund may be taxed on revenue account in certain circumstances.
- Paragraph 7 of the Exposure Draft carves out insurance and illness policies from the ambit of Section 295-84(4) qualification. This means that such policies will be automatically taxed within the superannuation fund on capital account. In these situations, it will be necessary to apply the provisions of Section 118-300 in determining whether or not the claim proceeds are exempt from CGT.

It is submitted that superannuation funds should have the certainty that all life insurance held within the superannuation fund is taxed on capital account. Therefore all life insurance policies covered by Section 118-300 should automatically fall within the general provisions of Subsection 295-85 to be taxed under the CGT Rules. It is not appropriate to have some forms of life insurance falling outside the limitations imposed by subsection 295-85(4), and other forms falling within these limitations. The FSC considers that the limitations of Subsection 295-85(4) should not include any reference to life insurance policies.

We therefore suggest that Paragraph 7 of the Exposure Draft simply repeals Table Item 10 thereby excluding life insurance in superannuation from the ambit of Subsection 295-85(4).

We would welcome the opportunity to speak further with respect to our submission.

If you have any questions regarding this letter, please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely



**CARLA HOORWEG**  
Senior Policy Manager – Investment, Global Markets & Tax