SELF-MANAGED SUPER FUND
PROFESSIONALS' ASSOCIATION
OF AUSTRALIA

SMSF Professionals'
Association of Australia Ltd
ABN 67 103 739 617

SPAA House
Level 1
366 King William Street
Adelaide SA 5000
T 1300 779 096
F +61 8 8212 5993
E enquiries@spaa.asn.au

www.spaa.asn.au

14 February 2012

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

Email: cgt_tradingstock@treasury.gov.au

Dear Ms Barron,

The Self Managed Superannuation Funds Professionals' Association of Australia ("SPAA") welcomes the opportunity to make a submission in relation to the exposure draft of legislation that removes access to the trading stock exception to the capital gains tax (CGT) primary code rule for certain assets owned by a complying superannuation entity.

The key points of this submission are:

- **SPAA supports the legislation to limit the trading stock exemption for superannuation funds.**
- **The exposure draft legislation may still result in confusion and uncertainty for self managed superannuation funds (SMSFs) and their advisors.**
- **SPAA believes that the legislation should go further and remove the trading stock exemption for all assets held by superannuation entities.**
- **We are uncertain about the interaction of the proposed amendments and the CGT discount.**

SPAA is the peak professional body representing the SMSF sector throughout Australia. SPAA represents professionals, irrespective of their personal membership and professional affiliations, who provide advice to individuals aspiring to higher levels of participation in the management of their superannuation savings. Membership of SPAA is principally accountants, auditors, lawyers, financial planners and other professionals such as actuaries.

SPAA is committed to raising the standard of professional advice and conduct in the SMSF sector by working proactively with Government and the industry. In doing so, SPAA has contributed to SMSF advisors providing a higher standard of advice to SMSF trustees. This in turn has enabled trustees to make more informed decisions addressing the adequacy, sustainability and longevity of their own retirement savings. SMSFs offer trustees greater control and flexibility and have become an integral part of the Australian Superannuation landscape by providing significant and viable options for managers, business owners, executives and retail operators alike.

SPAA supports the Government's amendments to limit the trading stock exception and believes that the amendments will reduce uncertainty for SMSFs that are holding the types of assets excluded by the draft legislation. SMSFs that hold shares, non-share equity interests, units in unit trusts, land or any rights or options related to these types of assets will have certainty that gains and losses on these assets with be taxed under the CGT primary code for superannuation entities.

While the proposed legislation removes uncertainty in regards to 'covered assets' (as defined by section 275-105 of the *Income Tax Assessment Act 1997* (ITAA1997)), this narrow category of assets that are excluded from the trading stock exemption to the CGT primary code rule for complying superannuation entities may cause confusion and uncertainty for SMSFs and SMSF advisors where SMSFs are carrying on a business and legitimately hold 'covered assets' as trading stock.

The draft legislation and explanatory memorandum do not address the interaction between having trading stock taxed under the CGT rules and the CGT discount for superannuation funds. Assets that would be considered to be trading stock and held for at least 12 months should be eligible for the CGT discount when taxed under the CGT rules — the draft legislation and explanatory memorandum are silent on this issue. The ambiguity around this interaction may cause further uncertainty for SMSFs and SMSF advisors.

SPAA believes these issues may undermine the intention of the legislation as explained in paragraph 1.7 of the draft explanatory memorandum which explains that the amendments seek to "remove the present ambiguity around the application of the trading stock provisions."

SMSFs carrying on a business and holding trading stock as part of that business

The amendments proposed in the exposure draft to limit the trading stock exemption to the CGT primary code rule for complying superannuation entities may unintentionally limit access to the trading stock exemption to the CGT primary code in situations where the assets are legitimately being held as trading stock. In these situations, the superannuation entity would expect the relevant asset to receive trading stock treatment but under the proposed amendments, gains and losses will be taxed under the CGT rules. This type of situation will arise where a SMSF is carrying on a business and the business holds one of the assets excluded as trading stock of its business.

An example of this may be a SMSF trustee that carries on a land development business that buys and sells land which would be held as trading stock for tax purposes. Under the proposed legislation, the gains and losses on the sale of land will be taxed under the CGT rules, not the trading stock rules. SPAA is not opposed to the gains and losses from the sale of trading stock to be taxed under the CGT rules. However, the situation where certain assets are excluded from trading stock treatment while others are not will cause complexity and uncertainty for SMSFs and their advisors. Also, it is unfair that SMSFs that are carrying on different businesses can receive different taxation treatments based on the type of business they are conducting. As different types of business will hold different types of assets legitimately as trading stock, some businesses being run by SMSFs will be unable to access the trading stock exemption under the proposed legislative change.

These problems could be avoided by removing the trading stock exemption from the list of exemptions in subsection 295-85(4) of the ITAA1997, so that all trading stock assets will be taxed under the CGT rules not just those listed as covered assets in section 275-105 of the ITAA1997. SPAA believes this would be a more simple and equitable outcome.

Trading stock held for more than 12 months and the CGT discount

The draft legislation and explanatory memorandum have not addressed the issue of whether assets that are normally treated as trading stock but are excluded from the trading stock exemption under the proposed amendments will receive the benefit of the CGT discount when they are taxed under the CGT rules and have been held for at least 12 months. These assets should be eligible for the CGT discount if they are being taxed under the CGT rules. However, this is not clear on reading the provisions in Division 115 and section 295-85 of the ITAA1997 in conjunction with the proposed amendments. The ambiguity of this interaction will cause uncertainty for SMSFs and SMSF advisors when assessing their tax liability when an asset is realised in this situation.

Uncertainty around this issue could be removed by explaining this interaction in the explanatory memorandum that accompanies the legislation. Material explaining the interaction and an example of how the law should work would assist SMSF trustees and SMSF advisors to correctly apply the law.

Recommendation

SPAA recommends that the trading stock exemption for superannuation funds be removed from the list of exemptions in subsection 295-85(4) of the ITAA1997 so that all trading stock assets will be taxed under the CGT rules not just assets listed as covered assets in section 275-105 of the ITAA1997. This approach would result in:

- A more simple legislative change.
- Removing uncertainty around the treatment of all trading stock assets held by superannuation funds.
- An equitable tax treatment for all assets held by SMSFs by not allowing some SMSFs trading stock treatment and excluding others on the basis of the assets that they hold.

Further, SPAA recommends that uncertainty around the interaction of the CGT discount and the proposed limitation of the trading stock exemption from the CGT primary code for superannuation entities be clarified in the explanatory memorandum for the amendments.

We would be pleased to provide you with any further information in support of our submission.

Contact Numbers:
Tel: (08) 8205 1900

Mrs. Andrea Slattery
Chief Executive Officer

Mr. Peter Burgess
Technical Director

Yours sincerely

Andrea Slattery
CEO