

19 April 2017

Attention: Kathryn Davy
Division Head
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
Australia

BY EMAIL: stapledstructures@treasury.gov.au

Dear Kathryn

**New Zealand Superannuation Fund (“NZSF”) – Submission
Stapled Structures – Consultation Paper March 2017**

We refer to the Australian Government’s stapled structures consultation paper dated 24 March 2017 and to the workshop with Treasury and Australian Tax Office (“ATO”) Officials and interested parties held at KPMG Sydney’s offices on 7 April 2017. We appreciate the opportunity to provide input on the consultation.

Background on the New Zealand Superannuation Fund:

NZSF is a long-term, growth-oriented, global investment fund that is funded by the New Zealand Government. The purpose of NZSF is to provide for the future funding of retirement benefits paid by the New Zealand Government which are guaranteed to all New Zealanders aged 65 and older (New Zealand Superannuation).

The organisational form of NZSF is not an entity but rather it is a collection of assets wholly owned by the New Zealand Government. NZSF consists of a pool of assets on the Government’s balance sheet that are managed by a Government entity, the Guardians of New Zealand Superannuation (“GNZS”). The goal is to grow the size of NZSF to help pay for future New Zealand Superannuation payments.

NZSF is unable to control an operating business which means it may have different ownership interests in respect of the active and passive portions of some of its investments.

Further background information on NZSF is contained on our website: www.nzsuperfund.co.nz.

NZSF is invested in diversified assets throughout the world, including Australia. Australian investments, include: listed equities, bonds, and unlisted interests in timberlands, toll roads, and retirement villages.

As at 31 March 2017 NZSF had total investments of NZ\$34 billion with approximately NZ\$2 billion (6 percent) invested in Australia.

NZSF is currently in negotiations to increase its investment footprint in Australia by investing directly in the agricultural sector. The rural land asset class in both Australia and New Zealand is becoming increasingly important for institutional investors given the sector's significant potential and its proximity to the critically important Asian markets together with the increased protein requirements of their populations. We note it is very difficult to obtain these exposures via the listed market and therefore direct investments are preferred.

Summary of submission

We welcome the Australian Government's consultation in relation to stapled structures and support the need to provide taxpayers with greater certainty in respect of their Australian investments. As the Australian Government considers potential legislative changes, we submit the following:

- Any legislative change should ensure the continued flow-through tax treatment of the unit trusts in a stapled structure and the ability to utilise the Managed Investment Trust (MIT) regime;
- Proposed changes should take into consideration any policy intent designed to encourage foreign investment into Australian real estate and infrastructure assets;
- The Australian Government should implement specific anti-avoidance provisions to target the "egregious" transactions rather than changing the tax settings in relation to all stapled structures;
- The Australian Treasury should engage in a more fulsome consultation period with stakeholders to properly address the use of staples for investments in real estate, infrastructure and agriculture; and
- Notwithstanding our submissions above, if major changes are to occur in respect of the existing stapled structures framework, there is a need for extensive grand-parenting provisions given the likely adverse effect on asset values.

Detailed submissions:

The recent ATO Revenue Alert TA 2017/1 (issued 31 January 2017) and the Treasury's Stapled Structures consultation paper have caused considerable uncertainty amongst both local and international investors.

Addressing integrity issues

We respect the sovereign right of any Government to determine its own regulatory framework and recognise the need to protect the integrity of the tax base. We understand that the Australian Government is concerned with the increased use of stapled structures to re-characterise trading income into more favourably taxed passive income thus reducing the Australian tax payable by non-resident investors.

Treasury has advised that the use of the MIT regime and flow through taxation afforded to non-residents do not raise tax integrity issues and their concern is solely in relation to the re-characterisation of trading income.

We also note that various integrity measures were implemented in 2016 to reduce the scope for shifting income between stapled entities. The effectiveness of these measures has not been fully tested yet and will become apparent at the expiry of this and future income years.

Given the current uncertainty surrounding the use of stapled structures we would encourage the Government to:

- make a holding announcement in the Federal Budget that a review is to take place in relation to the use of stapled structures;
- take into consideration any policy intent behind the existing framework that is designed to encourage foreign investment into Australian real estate and infrastructure assets; and
- issue guidance that the Government's preference is to implement specific avoidance rules to target the "egregious" transactions (e.g. the use of total return swaps and royalty staples to re-characterise trading income) rather than changing the tax settings in relation to all stapled structures. This seems an appropriate response because the integrity problem highlighted in the consultation document appears to be quite discrete and only affects a limited number of transactions that use stapled structures.

Ensuring international competitiveness

We are heartened by the comments made in the consultation paper that:

"The Government is committed to ensuring that Australia is an internationally competitive location for foreign investment – this is particularly important in an increasingly integrated global market.... Australia needs to be internationally competitive to attract and retain investment given that investors can choose the level of investment and where to invest. Investment is important in a small capital-importing country, such as Australia, as it increases productivity, real wages and living standards."

Australia, like New Zealand, relies heavily on foreign direct investment (FDI) to fund domestic investment.

From an international investor's perspective it is important that the country in which we base our investment has a stable and predictable regulatory environment that provides certainty and therefore low costs of compliance. Shifts in regulatory frameworks can adversely affect asset values for existing investments and investor perceptions of the attractiveness of a particular market in relation to future investments. Global investor capital is very mobile.

Stapled structures have been used to invest into assets in Australia for a considerable period of time and are the investment structure of choice for real estate, infrastructure and agricultural investments. As pointed out in the consultation paper, a large number of these stapled structures are listed on the ASX and account for approximately 10 percent of total ASX market capitalisation. Non-resident and resident institutional investors have also invested billions of dollars in Australia's recent State Government asset privatisation processes via stapled stock structures specifically sanctioned by the ATO.

Adequate time for consultation

We are concerned with the speed at which this matter is advancing and reiterate the concerns raised at the Treasury workshop that the widespread use of stapled structures and their importance in Australia's investment framework mean there needs to be a full review including consultation with all affected parties and any solution needs to be fit for purpose. A consultation process of approximately four weeks with possible decisions being announced in the Federal budget on 9 May 2017 seems unduly rushed.

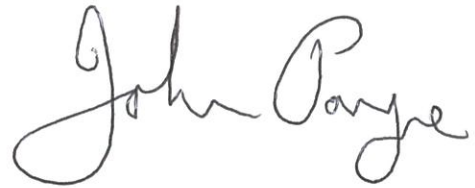
We would like to continue to participate in the consultative review process.

Please contact our Head of Tax John Payne (+64 9 373 8964 jpayne@nzsuperfund.co.nz) if you have any questions in relation to this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Adrian Orr', with a long horizontal flourish extending to the right.

Adrian Orr
Chief Executive Officer
Guardians of New Zealand
Superannuation

A handwritten signature in black ink, clearly legible as 'John Payne', written in a cursive style.

John Payne
Head of Tax
Guardians of New Zealand
Superannuation