

SUBMISSION

Submission to Treasury – Tax treaty network expansion

22 December 2022

**The Association of Superannuation
Funds of Australia Limited**
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)

F 1300 926 484

W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

File: 2022/25

Tax Treaties Branch
Corporate and International Tax Division
Treasury
Langton Crescent
Parkes ACT 2600

Via email: TaxTreatiesBranch@treasury.gov.au

22 December 2022

Dear Sir/Madam

Tax treaty network expansion

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this response to Treasury's consultation on expanding the tax treaties network.

About ASFA

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

ASFA members' desired outcomes from the treaty network expansion

ASFA welcomes Treasury's consultation seeking views on the key outcomes that Australia should seek in negotiating new tax treaties.

The APRA-regulated superannuation sector represents some of the largest Australian investors in foreign jurisdictions, therefore matters in relation to tax treaties are of particular importance to ASFA's members.

With the assistance of our Tax Specialist Advisory Committee, ASFA has made two prior submissions that address issues relevant to the current consultation:

- our submission dated 29 October 2021 in response to Treasury's consultation on the first phase of the treaty expansion program
- our submission dated 1 April 2016 to the OECD in relation to a discussion draft on the treaty residence of pension funds.

We have attached copies of these submissions for your reference.

As outlined in our 2021 submission, ASFA's primary concerns, as part of the expansion of the treaty network, include ensuring that:

- a consistent definition of 'pension scheme' or 'superannuation fund' is adopted into Australia's tax treaties
- there is clear recognition of Australian superannuation funds as 'persons' or beneficial owners for treaty purposes
- treaties to which Australia is a party specifically exempt the income of an Australian superannuation fund from tax in the other country
- lump sum payments from Australian superannuation funds are appropriately treated as subject to withholding tax at source (that is, in Australia).

We particularly wish to highlight the importance of the first point above. The insertion of a consistent definition of an Australian superannuation fund into all treaties to which Australia is a party would assist greatly with the application of those treaties and the facilitation of the global investment of Australian superannuation funds. In this respect, we recommend the approach adopted in Australia's treaty with the Swiss Confederation, which is the only implemented treaty ASFA is aware of that contains a specific definition of an Australian superannuation fund. (While Australian superannuation funds are recognised in the new treaty Australia recently signed with Iceland, that treaty has not yet taken effect.)

If you have any queries or comments in relation to our submission, please contact Julia Stannard, Senior Policy Advisor, on (02) 8079 0819 or by email jstannard@superannuation.asn.au.

Yours sincerely

Julian Cabarrus

Director - Policy Operations, Member Engagement & External Relations