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File Name: 201264_TSY_SMSFs_Admin penalties_1

17 September 2012

Manager
Benefits and Regulation Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: strongersuper@treasury.gov.au

RE: *Tax Laws Amendment (Stronger Super Self Managed Superannuation Funds) Bill 2012: Administrative Penalties*

Dear Manager,

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission in response to the exposure draft *Tax Laws Amendment (Stronger Super Self Managed Superannuation Funds) Bill 2012: Administrative Penalties* that introduces administrative consequences and penalties for trustees of self-managed superannuation funds (SMSFs) by providing the Commissioner of Taxation (Commissioner) with additional tools and more flexibility to deal with non-compliance with the law. These new tools will be available in conjunction with the Commissioner's existing powers to regulate the SMSF sector.

About ASFA

ASFA is a non-profit, non-political 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 and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General Comments

ASFA supports the introduction of administrative penalties for SMSF trustees as a further tool to be utilised by the Regulator. ASFA appreciates that under his present powers the Commissioner has very few compliance tools with which to deal with breaches by SMSF trustees. Apart from applying to a court for civil penalties to be imposed, and requiring trustees to accept an enforceable undertaking in relation to contraventions, the only other action available to the Commissioner is to make an SMSF non-complying for taxation purposes.

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It is noted that the exposure draft applies administrative penalties to contraventions of only some of the provisions that apply to SMSFs. However, ASFA recommends that administrative penalties in relation to SMSFs should be able to be applied in respect to contraventions of all provisions, not only those provisions listed in the exposure draft.

ASFA recommends that Appendix 1 to the Independent Auditor's Report contains the full list of provisions to which administrative penalties should be applied where a contravention occurs.

By doing so ASFA believes that the Regulator will be given greater flexibility for how it deals with SMSFs and their trustees who commit minor breaches. A major benefit here is that no longer will the Regulator have to make the difficult choice between declaring the SMSF non-complying, disqualifying the trustee, facing the difficult procedural task of seeking court-imposed civil or criminal penalty provisions or taking no action at all.

ASFA expects that these amendments will lead to a more proactive regulation of the administration of SMSFs, particularly with respect to minor breaches of the Act or Regulations.

Specific Comment

In regards to Division 3 – Administrative penalties – a typographical error appears in Item 15 in the table under Section 166(1) that refers to section 160(4). It is noted that section 160 was repealed on 11 March 2002.

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We thank you for providing us with the opportunity to make this submission and to participate in the consultation process.

If you have any queries or comments regarding the contents of our submission, please contact our Policy Communications and Reporting Manager, Tony Keir on (02) 8079 - 0815 or via e-mail to tkeir@superannuation.asn.au

Yours sincerely



Margaret Stewart

General Manager, Policy and Industry Practice