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24 June 2011

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

Email: cgt_tradingstock@treasury.gov.au

Dear General Manager,

RE: Proposals Paper – Capital gains tax – limiting the trading stock exemption for superannuation funds

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission with respect to the above Proposals Paper seeking comments on the implementation of the Government's 2011-12 Budget announcement of a change in the circumstances under which a superannuation fund may access the trading stock exemption to the CGT primary code that generally applies to of gains or losses on the assets of superannuation funds.

The Association of Superannuation Funds of Australia (ASFA) is a non-profit, non-political national organisation whose mission is to advance effective retirement outcomes for members of superannuation funds through research and advocacy. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds as well service providers some of whom deal with self managed superannuation funds (SMSFs), has over 90% of the approximately 12 million Australians with superannuation as members. ASFA members manage or advise on the bulk of the \$1.3 trillion in superannuation assets as at September 2010. ASFA is the only organisation that represents all types of superannuation funds and associated service providers.

Comments on the Proposals Paper

ASFA supports the proposal to remove the trading stock exemption to the CGT primary code rule for a complying superannuation entity. The change is consistent with the recent changes to the managed investment trust rules which permit such trusts to make an election to have all gains treated on capital account. That change was strongly supported by ASFA.

We note that the assets covered by change will include:

- a share in a company (including in a foreign hybrid company)
- a non-share equity in a company
- a unit in a unit trust
- land (including an interest in land), and
- a right to an option to acquire or dispose of a share in a company

ASFA notes that the Superannuation Industry (Supervision) ACT at section 62 sets out the sole purposes for which a superannuation fund may be maintained. It is arguable that the sole purpose test effectively prevents a complying superannuation fund from running a business. To this extent a fund should not ordinarily be holding 'trading stock' and a transitional rule should not be necessary.

However, ASFA supports the inclusion of a transitional rule so as to provide relief for superannuation funds that may otherwise be in breach of the new law.

Should you have any questions please contact our Principal Policy Adviser, Robert Hodge, on 02 8079 0806.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Graus', written in a cursive style.

David Graus
General Manager, Policy & Industry Practice