



SELF-MANAGED INDEPENDENT SUPERANNUATION FUNDS ASSOCIATION

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Dear Tania

Look-through treatment for limited recourse borrowing arrangements (LRBAs)

The Self-managed Independent Superannuation Funds Association (**SISFA**) welcomes the chance to make a submission to Treasury in relation to the *Tax and Superannuation Laws Amendment (2015 Measure No. 2) Bill 2015: Instalment warrants* exposure draft legislation (**Exposure Draft**). In this submission SISFA has confined its comments to LRBAs.

1. GST implications

The Exposure Draft does not make provision for, or amendment to, the GST treatment of the holding trust structure under a LRBA. It is SISFA's view that the look-through income tax treatment contained in section 235-840 of the Exposure Draft should be extended to the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*.

Such an outcome would allow a superannuation fund to be treated as holding the asset from a GST perspective therefore avoiding the need for the holding trust to obtain an ABN and register for GST. Benefits of this approach include:

- reducing the additional administration of requiring ABN/GST registrations for both the holding trust and the superannuation fund;
- preventing multiple ABN/GST arrangements for multiple holding trusts where superannuation funds have entered into multiple LRBAs; and
- avoiding any potential GST consequences for the transfer of the asset from the holding trust to the superannuation fund at the end of the LRBA.

SISFA considers that consistent income tax and GST treatment of LRBAs aligns with Government's stated policy intent of the Federal Government behind the Exposure Draft. Namely to "remove uncertainty about the taxation treatment of such arrangements"¹ including LRBAs.

2. Vesting terminology

Subsection 235-840(a) provides that the look through approach will only apply for a holding trust if the asset "vests in the trustee of the [holding] trust for the benefit of a trustee of a regulated superannuation fund". Whereas, paragraph 67A(1)(b) of the SIS Act requires that "the acquirable asset is held on trust so that the RSF trustee acquires a beneficial interest in the acquirable asset".

In SISFA's view the terminology in subsection 235-840(a) should align with the terminology of paragraph 67A(1)(d) of the SIS Act. This would avoid any arguments that section 235-840(a) is narrower in its application than paragraph 67(1)(d).

¹ Explanatory Memorandum to the Exposure Draft at paragraph 1.7.

3. Treatment after the borrowing is repaid

The Exposure Draft appears to only apply while the LRBA loan is in place. Pursuant to subsection 235-840(b), the application of the look through approach is limited to “an arrangement [that] is covered by the exception in subsection 67A of that Act”. However, where the borrowing has been repaid and a loan no longer exists that is covered by subsection 67A(1) of the SIS Act, it is unclear whether the look through tax treatment will continue to apply to the holding trust. In practice, assets will not always be transferred from the holding trust to the superannuation fund trustee when the LRBA loan is repaid. SISFA recommends that the Exposure Draft should expressly state that the look through income tax treatment should continue to apply while the asset is held by the holding trust even after the loan has been repaid.

Yours faithfully

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

Phil Broderick
CHAIR OF THE SISFA TECHNICAL COMMITTEE