



Australian Government

The Treasury

LIMITING THE TRADING STOCK EXCEPTION FOR SUPERANNUATION FUNDS

SUMMARY OF CONSULTATION PROCESS

The Government announced on 10 May 2011 that it would remove the ability of complying superannuation entities to treat certain assets (primarily shares, units in a trust and land) as trading stock. This is consistent with the general industry practice of treating shares on capital account.

This measure was included in Tax Laws Amendment (2012 Measures No. 1) Bill 2012, which was introduced into Parliament on 21 March 2011.

Consultation process

Consultation on the [policy design](#) was conducted between 27 May 2011 and 24 June 2011. There were four public submissions and one confidential submission.

Submissions on the policy design can be viewed on the [Treasury website](#).

Consultation on the [draft legislation](#) was conducted between 13 January 2012 and 10 February 2012. Three public submissions were received.

Submissions on the draft legislation can be viewed on the [Treasury website](#).

Summary of key issues

All submissions on the policy design generally supported the measure.

However, one policy design submission suggested that transitional relief is not required because complying superannuation entities should not ordinarily hold trading stock due to the requirements of the sole purpose test under the *Supervision Industry (Supervision) Act 1993* (SIS Act).

This measure does not affect whether superannuation entities are entitled to hold trading stock and engage in share trading activities under the SIS Act, rather this measure applies solely for income tax purposes.

The public submissions on the draft legislation generally supported the legislation.

However, one submission raised concerns that the exposure draft legislation results in inconsistency as self-managed superannuation funds that conduct a business using assets covered by the managed investment trust (MIT) choice of capital treatment rules will be treated differently than those conducting a business using non-covered assets. The submission suggested removing the trading stock exception for all assets.



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This suggestion was not adopted. These proposed changes ensure that capital gains tax (CGT) treatment applies where a complying superannuation fund invests in covered assets or where a complying superannuation fund invests in a MIT which, in turn, invests in covered assets where the MIT has chosen to treat gains and losses on capital account under the capital treatment election rules.

The submission also suggested that there is uncertainty as to whether assets that are subject to these amendments will be able to access the CGT discount when they are taxed under the CGT rules.

No changes were made to the legislation or explanatory material in response to this suggestion, as it is intended that the CGT discount will be available to superannuation funds holding covered assets where the assets are taxed under the CGT rules and have been held by the superannuation fund for at least 12 months.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Paul McMahon on 02 6263 3385.

Thank you to all participants in the consultation process.