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24 February 2012

Subject: Submission on Exposure Draft Regulations - GST Financial Supply Provisions

Dear Sir/Madam

Mercer (Australia) Pty Ltd welcomes the opportunity to provide its views on the exposure draft of the proposed regulations. We have confined our comments to issues relating to superannuation funds.

Who is Mercer

Mercer is a leading global provider of consulting, outsourcing and investment services, with more than 25,000 institutional clients worldwide. Mercer consultants help employers design and manage health, retirement and other benefits, and optimise human capital.

Mercer also provides customised administration, technology and total benefits outsourcing solutions to a large number of employer clients and superannuation funds (including industry funds, master trusts and employer sponsored superannuation funds). Mercer's outsourcing business has \$40 billion in funds under administration locally, provides services to over a million super members and 20,000 private clients and is part of a global consulting, outsourcing and investments firm which operates in 42 countries.

We provide our own master trust the Mercer Super Trust in Australia which has approximately 270 participating employers, 240,000 members and more than \$15 billion in assets under management. Mercer's investment services include global leadership in investment consulting and multi-manager investment management. We also provide personal financial advisory services for individuals including Self Managed Superannuation Funds.

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Executive Summary

The GST legislation, as it applies to financial services, is extremely complex with many areas of doubt. We are concerned that the provisions in the exposure draft will add even greater complexity and increase confusion. It will also increase the costs involved in administering superannuation funds due to the additional work required to determine the level of RITCs available, in addition to a potential reduction in the level of RITCs.

We also found that the draft Explanatory Memorandum was of little use in understanding the proposed changes. In fact it confused and hindered understanding rather than providing clarification.

It would appear that superannuation funds and their suppliers will need to make significant changes to their processes and systems in order to comply with the new requirements. We are very concerned with the very short time period in which these changes will need to be made.

We also have concerns with the limited extent of the proposed provisions relating to processing and assessing life insurance claims and the effective limitation to a 55% RITC for services relating to monitoring and reporting for AMLCTF purposes.

We recommend that:

- the commencement date of the changes be deferred to allow funds and their suppliers time to modify systems and processes
- the EM be significantly revised to better explain the proposed system
- greater clarification in the Bill and EM that various items are eligible for a 75% RITC
- the term “services” in Item 32 be clarified
- the legislation be amended to clarify that all the following costs would be subject to a 75% RITC:
 - assessing and processing insurance claims under life insurance policies
 - assessing and processing disability insurance claims under general insurance policies
 - assessing and processing eligibility for death and disability benefits under self-insured arrangements
 - assessing and processing eligibility for other benefits (eg ill health retirement, financial hardship etc)
 - arranging and managing any insurance policies in relation to death and disability benefits

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- greater guidance be provided in relation to the supporting material that funds will need in order to claim a 75% RITC in respect of the relevant parts of a bundled administration (or other) service
- proposed item 33 (monitoring and reporting for AMLCTF purposes) be subject to a 75% RITC in all cases
- superannuation and trusts that are excluded from the new regime should be able to opt in to the new regime

Our more detailed comments are set out below:

Timing

The proposals in the Bill will require significant changes to current systems and processes. Super funds will need to liaise with:

- their accountants/tax agents to understand the new system and any additional requirements the accountants will need to complete the necessary returns
- their system suppliers to arrange system changes
- their suppliers to ensure that there is appropriate supporting evidence for any 75% (rather than 55%) RITC claim and, if necessary, amend contractual arrangements

Staff will need to be trained.

However, existing systems will need to be retained for funds with a trustee that is not required to be registered for GST and for trusts which are not “recognised trust schemes” adding even further complications to system development.

These tasks and resultant changes to systems and processes will take time to implement. We do not believe that there is sufficient time for funds to implement by 1 July 2012. Although funds will not need to lodge their first BAS under the new system until at least August, the changes are likely to impact on the fund’s operations (including the calculation of unit prices) from 1 July 2012.

EM needs to be revised

Understanding was not helped by the wording in the EM including:

- the reference on page 1 to “limit access to a RITC for bundled trustee and responsible entity services (trustee services), the heading “Trustee and responsible entity services” on page 5 and the reference on page 5 to “The introduction of a lower RITC for trustee services....” which all imply that the new rules will only apply to bundled trustee services and not services purchased from external parties. (We understand that the intention is that the 55% RITC rate can apply irrespective of who provides the service)

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- the apparent restriction to a 55% RITC rate for services only in cases where the trustee is registered or required to be registered for GST (which seems inconsistent with the proposal to apply a 55% RITC to certain services irrespective of who the provider is)
- Example 3 of the EM which sets out that only a 55% RITC is available in respect of costs incurred in administering the fund (whereas we understand that the costs associated with, for example, the services listed in item 24 (a)-(g) and (i) would qualify for a 75% RITC).

The manner of charging fees for services provided by the trustee varies from fund to fund. For example, a trustee might arrange an outsourced administration service on behalf of the fund but the fees are paid directly by the fund to the outsourced provider. In another case, the trustee might contract with the outsourced provider to perform some or all administration services and then either pass on the outsourced provider's fee or alternatively charge the fund an agreed fee (which may be more or less than the costs actually incurred by the trustee). It would be useful if the EM could include specific examples of these various arrangements in relation to the proposed changes.

Services

Proposed item 32 refers to the term "services". We note that "services" is not defined in the legislation and hence the extent of item 32 is not clear. We are particularly concerned with the treatment of rental costs incurred by the trustee – we consider that RITCs should be claimable in respect of such costs and the EM should be clarified.

Clarification of what is eligible for a 55% RITC

Item 32 appears to apply to all services other than those specified in part (b). We particularly question the intention in relation to (b)(iv). For simplicity we consider the application to a superannuation fund only. Item 32 excludes compliance with industry regulatory requirements (excluding taxation and auditing services) other than a service that relates to compliance with industry regulatory requirements that apply when acting as a trustee of a superannuation fund

This would appear to mean that compliance with industry regulatory requirements that apply when acting as a trustee of a superannuation fund is included in Item 32. The intention here is not clear. For instance, the production and distribution of reports and statements to members (item 24(c)) appears to be excluded from item 32, however such production and distribution is required to comply with industry regulatory requirements. When combined with the provisions of proposed sub-regulation 70-5.02(4), it becomes extremely unclear what level of RITC is available. A number of other specifically excluded items could also be considered to be compliance with industry regulatory requirements.

As a minimum, greater clarity needs to be provided in the EM. Preferably the Bill should be amended to clarify that items referred to in (b)(i), (b)(ii), (b)(iii), (b)(v) and (b)(vi) are subject to a 75% RITC.

It would also be worthwhile to provide examples in the EM of services relating to compliance with industry regulatory requirements that apply:

- when not acting as a trustee of a superannuation fund
- when acting as a trustee of a superannuation fund

Processing and assessing claims

The Bill proposes a new RITCable item – processing and assessing claims under life insurance policies. This provision adds further to the confusion.

- Some disability insurance is arranged under general insurance policies – why aren't these relevant general insurance policies included?
- Claims assessment and subsequent decisions under life insurance policies would generally be provided by the insurer as part of the life insurance premium (which is input taxed). Although the trustee would need to deal with the member and the insurer in relation to the claim and review the assessment, particularly in the case of declined claims, we consider that it would be reasonable to argue the trustee costs involved (whether carried out by the trustee or an agent) would be RITCable under item 24(b), which includes processing of applications and benefits
- Why isn't a similar provision included for self-insured arrangements where the trustee is required to process and assess claims (if this is not already eligible for an RITC under item 24(b))?

Again, the EM adds confusion. "This amendment would allow all non-life insurers providing life insurance products to access RITCs" It is our understanding that non-life insurers cannot provide life insurance products. A superannuation fund can provide access to a life insurance product issued by a life insurer. A superannuation fund can also provide benefits on death or disability on a self-insured basis or disability benefits insured with a general insurer however these would not be classified as life insurance products.

The provision in the Bill should be extended to cover all of the above items unless they are also covered under item 24(b).

Clarification of the eligibility for RITCs in relation to assessment of whether a member is eligible for an ill-health early retirement benefit, a financial hardship benefit, a redundancy benefit etc should also be clarified and the new provision expanded to cover these if they are not already covered by item 24(b).

Another area of uncertainty relates to the costs incurred in relation to the assessment of insurance policies/insurers, the review and maintenance of the insurance policies. This should also be clarified.

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Bundled administration services

Where a fund outsources its administration services, the service would normally include, in addition to contribution and benefit processing, production and distribution of reports, statements and forms to members, compliance with regulatory requirements and reporting and monitoring in relation to AMLCTF.

The EM should provide details of how a fund can claim a 75% RITC on the relevant part of a bundled invoice where some of the items are eligible for a 75% RITC and others for a 55% RITC. For example, what evidence would be required to justify the breakdown of the invoice into 75% and 55% RITCable items?

AMLCTF

The proposed inclusion of monitoring and reporting services under AMLCTF also raises confusion as it could be argued that these are industry regulatory requirements and hence already RITCable (at 75% under item 24(h)).

In any event, we consider that such services should always be eligible for a 75% RITC. Hence Item 33 should be added to the list of the items excluded from Item 32 (i.e. excluded from the 55% RITC).

Excluded arrangements

The new provisions do not apply where the trustee is not liable to be registered for GST. Further, the changes do not apply to trusts which are not recognised trust schemes. This will add confusion and complexity of systems and processes where an organisation is dealing with entities which are included in the new regime as well as entities which are outside the regime. To simplify the arrangements, we recommend that superannuation and trusts that are excluded from the new regime be able to opt in to the new regime.

If you have any queries on this submission, please contact Paul Shallue on 03 9623 5061.

Yours sincerely,



John Ward
Manager
Research & Information