

# SUBMISSION

## Submission to Treasury – Expansion of Australia’s tax treaty network

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19 April 2024

**The Association of Superannuation  
Funds of Australia Limited**  
Level 11, 77 Castlereagh Street  
Sydney NSW 2000

PO Box 1485  
Sydney NSW 2001

**T** +61 2 9264 9300  
1800 812 798 (outside Sydney)

**F** 1300 926 484

**W** [www.superannuation.asn.au](http://www.superannuation.asn.au)

ABN 29 002 786 290 CAN 002 786 290

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Corporate and International Tax Division  
Treasury  
Langton Crescent  
Parkes ACT 2600  
Via email: [taxtreatiesbranch@treasury.gov.au](mailto:taxtreatiesbranch@treasury.gov.au)

19 April 2024

Dear Sir/Madam

### **Expansion of Australia's tax treaty network**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation on the expansion of Australia's tax treaty network, in the context of the Government entering into tax treaty negotiations with Brazil, New Zealand, South Korea, Sweden and Ukraine.

### **About ASFA**

ASFA has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

ASFA has a keen focus on matters that impact the outcomes achieved by individuals through the superannuation system and issues that impede the industry's operational effectiveness.

### **ASFA members' desired outcomes from the treaty network expansion**

ASFA welcomes Treasury's invitation to provide input into issues related to Australia's tax treaty network.

The APRA-regulated superannuation sector represents some of the largest Australian investors in foreign jurisdictions, therefore matters in relation to tax treaties are of particular importance to ASFA's members.

With the assistance of our Tax Specialist Advisory Committee, ASFA has made three prior submissions that address issues relevant to the current consultation:

- submission dated 22 December 2022 in response to Treasury's consultation on the further expansion of the tax treaty network
- submission dated 29 October 2021 in response to Treasury's consultation on the first phase of the treaty expansion program

- submission dated 1 April 2016 to the OECD in relation to a discussion draft on the treaty residence of pension funds.

We have attached copies of these submissions for your reference.

As outlined in our 2021 submission, ASFA's primary concerns, as part of the expansion of the treaty network, include ensuring that:

- a consistent definition of 'pension scheme' or 'superannuation fund' is adopted into Australia's tax treaties
- there is clear recognition of Australian superannuation funds as 'persons' or beneficial owners for treaty purposes
- treaties to which Australia is a party specifically exempt the income of an Australian superannuation fund from tax in the other country
- lump sum payments from Australian superannuation funds are appropriately treated as subject to withholding tax at source (that is, in Australia).

We particularly wish to highlight the importance of the first point above. The insertion of a consistent definition of an Australian superannuation fund into all treaties to which Australia is a party would assist greatly with the application of those treaties and the facilitation of the global investment of Australian superannuation funds. In this respect, we recommend the approach adopted in Australia's treaty with the Swiss Confederation (the Swiss DTA). In the Swiss DTA, the interest and dividend articles both recognise that a complying superannuation fund can be the beneficial owner of dividends and interest. For example, Article 10(4) provides that the dividends paid by a company resident of Switzerland to a resident of Australia are not subject to Swiss tax where the beneficial owner derives the dividends "from the carrying on of complying superannuation activities" and holds no more than 10% of the voting power in the Swiss company.

In addition, we would consider it beneficial to ensure all new treaties appropriately recognise a trust (for example, an Australian unit trust) as a 'person'. This is a concept that is not well understood globally. Where such a clarification is provided (for example, in the treaty between Australia and the United States, in Article 3), this can significantly simplify interactions that Australian superannuation funds, as investors, may have with counterparties who are not familiar with Australian legal concepts.

More generally, we note that foreign superannuation or pension funds investing in Australia may be entitled to a range of tax exemptions and concessions under Australia's domestic tax laws. In relation to Australian dividend or interest withholding tax, foreign superannuation or pension funds may be able to access an exemption from such withholding tax in paragraph 128B(3)(jb) of the *Income Tax Assessment Act 1936*. Further, in terms of the Investment Manager Regime (IMR), subdivision 842-I of the *Income Tax Assessment Act 1997* provides an exemption from tax on gains made by "IMR widely held entities" on certain portfolio (less than 10%) investments in Australian issuers and counterparties. An IMR widely held entity specifically includes a "foreign superannuation fund" with at least 50 members.

Having regard to these specific tax exemptions and concessions which Australia offers to foreign superannuation and pension funds investing in Australia, these treaty negotiations offer an ideal platform for the Australian Government to request reciprocal exemptions and concessions for Australian superannuation funds to be enshrined in Australia's treaties with other jurisdictions (noting that it is likely to be much more difficult for the Australian Government to influence the specific inclusion of these exemptions and concessions directly in another jurisdiction's domestic tax laws).

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If you have any queries or comments in relation to our submission, please contact Julia Stannard, Senior Policy Advisor, on (02) 8079 0819 or by email [jstannard@superannuation.asn.au](mailto:jstannard@superannuation.asn.au).

Yours sincerely

James Koval

Head of Policy and Advocacy