27 September 2012

General Manager
Benefits and Regulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: superamendments@treasury.gov.au

Dear Madam/Sir,

# Portability of superannuation between Australia and New Zealand

The Self Managed Superannuation Funds Professionals' Association of Australia (SPAA) welcomes the opportunity to make a submission in relation to the exposure draft legislation which establishes portability of retirement savings between Australia and New Zealand. SPAA has serious concerns regarding the exclusion of self managed superannuation funds (SMSFs) from being able to receive or hold New Zealand-sourced retirement savings.

They key points of this submission are:

- **SPAA recommends that SMSFs be eligible to receive and hold New Zealand-sourced retirement savings that are transferred to an Australian superannuation fund.**
- **SPAA believes that excluding SMSFs from the measure will reduce the effectiveness of the trans-Tasman portability scheme.**
- **The SMSF sector is a well-regulated and well-functioning sector of the Australian superannuation environment and is an appropriate retirement savings vehicle for consolidating trans-Tasman superannuation.**
- **Excluding SMSFs from the measure places SMSFs at a disadvantage to APRA regulated funds.**

Paragraph 1.12 of the explanatory memorandum (EM) which accompanies the draft legislation states that New Zealand-sourced retirement savings held in Australian superannuation funds may only be transferred to and held in complying superannuation funds that are regulated by the Australian Prudential Regulation Authority (APRA) and may not be transferred to or held in SMSFs. This is reiterated in Example 1.1 in the EM.

SPAA believes that this restriction as to where New Zealand-sourced retirement savings can be directed in Australia is unneeded and unwarranted. The restriction is especially unwarranted in light of the Review into the governance, efficiency, structure and operation of Australia's superannuation system (the Cooper Review) findings that the SMSF sector was "largely a successful and well-functioning part of the system" and did not recommend any significant changes to the operation or regulation of SMSFs. SPAA is aware that the findings of the Cooper Review regarding SMSFs may have been unavailable at the time the Memorandum of Understanding was negotiated with the New Zealand Government. However, now that these finding are available to the Government, SMSFs should be regarded as an appropriate destination for New Zealand-sourced retirement savings.

The suitability of SMSFs as a destination for New Zealand-sourced retirement savings is strengthened by the compliance based regulation undertaken by the Australian Taxation Office (ATO). SMSFs are subject to very similar regulatory obligations under the taxation and superannuation laws as APRA regulated funds and regulated accordingly by the ATO. These laws in conjunction with ATO regulatory activities prevent any misuse of SMSFs. Further, the rate of compliance by SMSFs with taxation and superannuation laws is high. The ATO has revealed that for the audit years ended 30 June 2004 to 30 June 2009, SMSF contraventions of the taxation and superannuation laws occurred at a low rate of only two percent of all SMSFs operating in those years having contravened.[1] In addition, the ATO actively monitors and regulates the SMSF sector for incidences of theft and fraud, reducing the threat of SMSFs being abused to allow illegal access to retirement savings. For instance the ATO have cited the decline in illegal early release schemes featuring SMSFs as being a result of the ATO risk assessing newly registered funds, sharing intelligence with the superannuation industry to minimise risks and fraud and the ATO member verification system.[2] Accordingly, there is little risk in allowing SMSFs to hold or receive New Zealand-sourced retirement savings.

SPAA is also concerned that the exposure drafts exclusion of SMSFs will possibly result in approximately one-third of the superannuation industry not being able to be part of the trans-

[1] ATO, *Self-managed superannuation funds: A statistical overview 2009-10* http://www.ato.gov.au/content/downloads/SPR00316375n74068.pdf, p 18
[2] http://www.ato.gov.au/content/00333133.htm

Tasman portability scheme. This could significantly reduce the effectiveness of the measure, with more and more Australians choosing SMSFs as their preferred retirement savings vehicle to fund their retirement. An example of the ineffectiveness of excluding SMSFs occurs where someone who is a member of Kiwi Saver may not be able to rollover to an SMSF even if they meet the NZ condition of release at age 65. For instance, someone who has immigrated to Australia many years ago from New Zealand reaches age 65 wishes to rollover their Kiwi Saver account to Australia to add to their SMSF so they can commence an income stream from their Australian fund. Under the proposed rules, they will be unable to undertake this roll-over. This may also apply for someone to rollover their benefit from Australia to NZ. Not allowing SMSFs to hold or receive New Zealand-sourced retirement savings in SMSFs will deter people from using this measure and also undermine choice and flexibility in the superannuation system.

Finally, we are concerned that the decision to exclude SMSFs from the trans-Tasman portability scheme undermines the Government's policy that superannuation is the primary retirement savings vehicle for Australians. Excluding one-third of the superannuation sector from an international agreement by way of a Government decision sends the wrong message to Australians saving for retirement. This decision implies that the superannuation sector is not a level playing field and that savers cannot have confidence that there chosen savings vehicle in the superannuation environment will receive treatment equal to other retirement savings vehicles. Excluding SMSFs from the trans-Tasman portability scheme unfairly places the SMSF sector at a disadvantage to APRA regulated funds. SPAA believes that there should be a level playing field between SMSFs and APRA regulated funds in regards to receiving superannuation contributions and rollovers. This results in a fairer and more competitive superannuation industry which will benefit all Australians that save for the retirement thorough superannuation.

If you have any questions about our submission or would like any further information please do not hesitate to contact us.

Yours sincerely

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