



THE TAX INSTITUTE

23 December 2020

Alex Maevsky
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: superannuation@treasury.gov.au

Dear Sir,

Your Future, Your Super package

The Tax Institute welcomes the opportunity to make a submission to the Government in relation to the 'Your Future, Your Super' package of proposed reforms to the superannuation system, as announced in the Federal Budget 2020–21.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to Appendix A for more about The Tax Institute.

The Tax Institute, together with our National Superannuation Technical Committee, have reviewed the relevant exposure draft legislation and explanatory materials. Our submission below addresses our main concerns in relation to the exposure draft of the *Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Best Financial Interests Duty (Draft Bill)*. In particular, the proposed provisions relating to the prohibition on certain payments and investments and the associated civil penalties.

Prohibition on certain payments and investments

The Draft Bill proposes to amend the *Superannuation Industry (Supervision) Act 1993 (SIS Act)* to allow regulations to be made to specify that certain payments or investments made by trustees of registrable superannuation entities, and trustees of self-managed superannuation funds (**SMSFs**), are prohibited, or prohibited unless certain conditions are met¹. These payments would be prohibited regardless of whether the payment is considered to be in the best financial interests of beneficiaries.

The amendments also allow regulations to be made to specify that directors of the corporate trustee are prohibited from causing the corporate trustee to make a payment or investment to reflect the commercial reality that directors do not make payments and investments themselves.

¹ Available [here](#), specifically sections 117A, 117B and 117B of the Draft Bill.

It is understood that the power has been drafted to broadly cover any payments and investments from a superannuation entity, including payments relating to expenses associated with running the entity or investments made by the entity². The power aims to prohibit unsuitable expenditure in relevant circumstances e.g. payments where the trustees have used a third party intermediary to procure the prohibited expenditure or investment on their behalf.

Civil penalty provisions

The prohibition is a civil penalty provision for trustees and directors of registrable superannuation entities and trustees of a SMSF³. A contravention of such a provision involving dishonesty or intention to deceive or defraud is punishable on conviction by imprisonment for a maximum of 5 years⁴.

Submission

The Tax Institute is of the view that it is imperative that the scope (and purpose) of the proposed provisions is clearly expressed in writing and conveyed to the broader community. In addition, the regulations should be drafted with careful consideration and with reasonable consultation from experts within the tax community.

We would appreciate the opportunity to consult on the drafting of the regulations and any further consultation on the exposure draft legislation to ensure that the best and most equitable outcome is achieved for our members and for the continuous improvement of a better tax system.

If you would like to discuss any of the above, please contact either myself or Associate Tax Counsel, Michelle Ma, on [REDACTED]

Yours faithfully,



Peter Godber

President

² Explanatory Materials to the Draft Bill, available [here](#).

³ Section 193 of the SIS Act.

⁴ Section 202 of the SIS Act.

APPENDIX A

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of almost 12,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.