

James Konya
NRCG consultation
HM Revenue & Customs
Room 3C/04
100 Parliament Street
London, SW1A 2BQ

Dear Mr Konya,

Response to consultation on taxing gains made by non-residents on UK immovable property

Thank you for the opportunity to respond to the consultation "*Taxing gains made by non-residents on UK immovable property*" that was published alongside Autumn Budget 2017 on 22 November 2017. This is relevant to AustralianSuper as an offshore investor in UK real estate and we expect that, on the current basis, we will continue to wish to invest in UK real estate.

In summary, as a superannuation fund, we can be considered equivalent to a UK pension fund. We would therefore request that the rules are drafted in such a way as to maintain our equivalence and thereby exclude us from the new taxing provisions. This parity in treatment is important if the tax system is not to act as a barrier to the UK remaining a viable location for investment by the Australian superannuation industry, along with the potential benefits this provides (see Appendix A).

Exemption of tax on gains for overseas pension funds

The consultation document makes clear that the Government aims to extend UK taxation to the gains made by non-residents on UK immovable property in the same way it applies to resident investors. In essence, the rules seek to impose tax on funds that are currently exempt only due to being non-UK resident.

We welcome the fact that the consultation specifically acknowledges that it is not intended to bring into scope gains that would be exempt for reasons other than being non-resident:

"Those who are exempt from all UK capital gains, or otherwise not in the scope of UK tax for reasons other than being non-resident, will continue to be exempt or out of scope."

This includes gains that are exempt due to being attributable to overseas pension schemes as defined under s272 (1A) of the Taxation of Chargeable Gains Act 1992.

Recommendation

We recommend that Australian superannuation funds should fall within any exemption for overseas pensions on tax on gains made from UK immovable property. This could be achieved by using the existing definition of a recognised overseas pension scheme within s150 of Finance Act 2004 and further defined within The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 - SI 2006/206.

We would be happy to engage further to explain how our investments are held and therefore to ensure that the approach adopted is effective at retaining the current position. We would welcome any discussion with you in relation to this and can be contacted on +61 3 8648 3900.

Kind regards,



Mr Peter Curtis
Head of Investment Operations
AustralianSuper

Appendix A: investment potential of the Australian superannuation industry

The Australian superannuation system is based on a legislative mandated defined contribution model. As at 30 September 2017, total funds under management (“FUM”) of Australian superannuation funds was approximately AUD \$2.5 trillion (approximately GBP 1.4 trillion), and is anticipated to rise to more than AUD \$9 trillion (approximately GBP £5.2 trillion) by 2030. Some of the largest Australian investors in foreign jurisdictions are Australian superannuation funds. A significant share of the existing FUM are invested outside of Australia, and this share is anticipated to increase as the total size of the Australian superannuation sector increases.

AustralianSuper (“the Fund”) is Australia’s largest “public offer” superannuation fund, with 2.1 million members (being one in ten working people in Australia) and approximately AUD \$120 billion (approximately GBP £69 billion) of members’ assets.