

21/12/2022

Nicholas Dowie
Assistant Secretary, Tax Treaties Branch
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: TaxTreatiesBranch@treasury.gov.au

Dear Nicholas,

AustralianSuper submission - expansion of Australia's tax treaty network

AustralianSuper welcomes the opportunity to provide a submission to the Government's consultation in relation to Australia's tax treaties network.

AustralianSuper is Australia's leading superannuation fund and is run only to benefit members. Over 2.9 million Australians are members of AustralianSuper and we invest over \$260 billion of their retirement savings on their behalf. Our purpose is to help members achieve their best financial position in retirement.

AustralianSuper strongly supports the Government's program for the expansion of Australia's double tax treaties network. As the size of superannuation member assets continues to increase so does the range of cross-border investments held by large superannuation funds such as AustralianSuper. Australia's tax treaty network is therefore of increasing importance to the superannuation sector.

Our submission makes the following key points:

- Australian superannuation funds should be specifically referred to within Australia's double tax treaties to ensure that they are able to access the benefits of the treaties with minimal administrative difficulty.
- Australia's double tax treaties should provide an interest and dividend withholding tax exemption in relation to portfolio-like interests for Australian superannuation funds investing overseas. This would reciprocate the exemption already provided under Australian domestic law to foreign pension funds investing in Australia.

Addressing these issues would bring greater clarity to intended outcomes in the operation of the treaties and greater efficiency in their administration for Australian superannuation funds. These issues also have an important impact on the competitive investment landscape for superannuation funds as they increasingly seek to compete with global pension funds in respect of large global investment opportunities.

Inclusion of specific reference to an Australian superannuation fund

Australia's double tax treaties should specifically refer to Australian superannuation funds. The Australia-Switzerland tax treaty contains a definition that should be replicated across Australia's tax treaty network. Such an outcome would see Australian superannuation funds clearly included as entitled to the benefits of Australia's double tax treaties network, consistent with the intent of the treaties.

Because of their unique features compared to overseas pension funds, there is sometimes confusion in other jurisdictions as to the nature of Australian superannuation funds. These unique features include that Australian superannuation funds are taxed on their returns (rather than being tax exempt) and are generally accumulation funds (rather than defined benefit funds). In contrast to the experience of a regular company, or a pension fund, this can lead to significant administrative and compliance processes for Australian superannuation funds in establishing their entitlement to benefits under tax treaties with overseas revenue authorities, notwithstanding the intent of the treaties.

In this regard we are pleased to point to an example definition that references Australian superannuation funds that is already included in one of Australia's double tax treaties, being the Australia-Switzerland double tax treaty. Subparagraph (i), paragraph 1 of Article 3 of that treaty provides that:

The term "pension scheme" means any plan, scheme, fund, foundation, trust or other arrangement established in a Contracting State or, in the case of Australia, that is an Australian superannuation fund for the purpose of Australian tax, which is:

- (i) regulated by that State; or*
- (ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such schemes.*

AustralianSuper would strongly support the inclusion of this definition in Australia's broader double tax treaties network.

Reciprocal exemption for Australian superannuation funds

Australian domestic law currently provides a tax exemption for certain income derived by non-resident pension funds in Australia. As a matter of fairness to Australian superannuation members, reciprocal benefits should be provided to Australian superannuation funds investing overseas. We submit that tax treaty negotiations should be used to ensure a level playing field in this regard.

Specifically, Australia currently provides non-resident pension funds with a specific exemption from Australian withholding tax on interest and dividend income, where the non-resident pension fund is exempt from income tax in its country of residence. This exemption is contained in paragraph 128B(3)(jb) of the *Income Tax Assessment Act 1936* and applies in relation to portfolio-like interests.

Further, the OECD Model Treaty contemplates the inclusion of a similar specific tax exemption for pension funds.

In both cases the exemption is limited to where the country does not impose tax on that income (by contrast, investment earnings of Australian superannuation funds are generally taxed at 15%). However, AustralianSuper submits that due to the nature of Australian superannuation funds, their objectives and their Australian concessionally taxed profiles, there is no reason as to why such an exemption should not also apply to Australia's superannuation funds. Accordingly, Australia should seek to obtain this exemption in its treaty negotiation processes.

Conclusion

Thank you again for the opportunity to provide a submission to the consultation on the expansion of Australia's tax treaty network.

We would be pleased to discuss this, or any other matter raised in this submission with you further at your convenience, should you require.

If you have any questions or would like to arrange a discussion, please contact Gina Maio, Principal, Tax Services at gmaio@australiansuper.com.

Yours sincerely



Peter Curtis
Chief Operating Officer