21 February 2023

Adam Hawkins
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Retirement, Advice and Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email to **superannuation@treasury.gov.au**

Dear Adam,

Non-arm's length expense rules for superannuation funds

AustralianSuper welcomes the opportunity to provide a submission to the Government's consultation in relation to proposed amendments to the non-arm's length expense rules (NALI provisions) for superannuation funds.

AustralianSuper is Australia's leading superannuation fund and is run only to benefit members. Over 3 million Australians are members of AustralianSuper and we invest over $275 billion of their retirement savings on their behalf. Our purpose is to help members achieve their best financial position in retirement.

Our submission makes the following points:

- AustralianSuper is supportive of the Government's proposal for exempting large APRA-regulated funds from the NALI provisions for general expenses. In our view this is in line with the original policy intent of the rules, and significantly reduces compliance costs that would otherwise be ultimately borne by members.
- AustralianSuper is similarly supportive of an extension of the proposed exemption for large APRA-regulated funds from specific expenses. In our view, this approach is in line with members' best financial interests as it significantly lowers compliance costs and in turn reduces costs for members.
- In the absence of an exemption for large APRA-regulated funds from NALI with respect to specific expenses, we would welcome the opportunity to discuss with Treasury alternative solutions in order to appropriately target areas of concern and reduce compliance costs.
- In response to the specific question in the discussion paper, there are no unintended adverse consequences for large APRA-regulated funds, members and other stakeholders from adopting a sector-specific approach to the NALI provisions as they relate to general expenses.

Exemption from the NALI provisions for large APRA-regulated funds for general expenses

The policy intent of the NALI provisions is directed towards non-commercial related party arrangements that are designed to avoid contribution caps and other limits on contributions. As noted in the Discussion Paper, the NALI provisions are "*an integrity measure to prevent income from being diverted into superannuation funds* *to benefit from lower rates of tax compared to other entities, particularly the marginal rates applying to individual taxpayers*." Similarly, the 2019 amendments were introduced with the express aim of "*ensur[ing] that superannuation funds can't circumvent the contribution caps by using non-arm's-length expenditure to inflate their overall income*."[1]

It is common for large APRA-regulated funds to transact with related parties, most commonly with their trustee companies and wholly-owned investment vehicles.

These arrangements are always structured in accordance with a fund's obligation to act in members' best financial interests.

The intention of these arrangements is to reduce costs and pass on savings to members that contribute to their retirement outcomes in a competitive manner, rather than to obtain a tax benefit.

When testing these arrangements against the issues and risks that NALI was intended to address (see above), it is clear these arrangements are not directed to assisting individuals to circumvent contributions caps. Likewise, these arrangements are not aimed at diverting income into superannuation funds to benefit from lower rates of tax compared to other entities. Nor are these arrangements conducive to either of these ends. Rather, consistent with the aim of the superannuation system, these arrangements are directed to maximising the net returns on members' money that has been transferred into the superannuation fund in accordance with the rules and caps surrounding contributions.

Negating the need to effectively 'transfer price' these arrangements and providing clarity to the industry as to the resulting tax outcomes of this expenditure is very welcomed and addresses the disproportionate adverse outcome. The proposal in the discussion paper would result in lower costs to members and gives funds greater certainty as to their tax outcomes.

Approach to specific expenses

The Consultation Paper specifically references that large APRA-regulated funds would be exempted from the NALI provisions for general expenses, whilst remaining subject to the provisions for specific expenses linked to specific asset and income sources.

AustralianSuper is supportive of an exclusion for large APRA-regulated funds from *all* expenses. As with general expenses, it is a requirement for funds to act in members' best financial interests. Hence, as with general expenses, the aim of these arrangements is to assess and access investments at the lowest management fees possible to ensure members' best financial position in retirement. For the same reasons as identified in relation to general expenses, these arrangements do not present the issues and risks that the NALI rules were intended to address.

As with general expenses, the requirement to prepare 'transfer pricing' type documentation to establish the arm's length basis of these expenses imposes a significant compliance burden on funds, thereby increasing fund expenditure that is ultimately borne by members.

We do however acknowledge the middle-ground proposed by Treasury in proposing the exemption for general expenses only. In the absence of an exemption from NALI with respect to specific expenses for large APRA-

[1] Assistant Treasurer, Second Reading Speech to the Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2019.

regulated funds, we would welcome the opportunity to discuss with Treasury alternative solutions in order to appropriately target areas of concern to Treasury and to reduce compliance costs.

No unintended adverse consequences for large APRA-regulated funds

The NALI provisions, as stated above, were originally intended to target non-arm's length related party arrangements designed to contravene superannuation contribution cap rules.

Related-party arrangements entered into by large APRA funds do not present the issues or risks that the NALI rules seek to address.

Accordingly, there are no unintended adverse consequences for large APRA-regulated funds, members and other stakeholders from adopting a sector-specific approach to the NALI provisions.

Conclusion

Thank you again for the opportunity to provide a submission to this consultation paper.

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

If you have any questions or would like to arrange a discussion, please contact Gina Maio, Principal, Tax Services at **gmaio@australiansuper.com** or Nick Coates, Acting Head of Government Relations and Public Policy at **ncoates@australiansuper.com**.

Yours sincerely

Peter Curtis
Chief Operating Officer