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Manager
Contributions and Accumulation Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: strongersuper@treasury.gov.au

RE: Exposure draft Tax laws Amendment (2011 measures No. 2) Bill 2011: Use of TFNs for superannuation purposes

Dear Sir/Madam,

The Association of Superannuation Funds of Australia (ASFA) would like to lodge this submission with respect to the above exposure draft legislation and explanatory memorandum.

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. Our members include corporate, public sector, industry and retail superannuation funds plus service providers who provide professional services to SMSFs, account for more than 5.7 million member accounts and over 80% of superannuation savings.

Comments on the exposure draft legislation

ASFA has reviewed the draft legislation and considers that it meets the defined objectives of:

- Removing the current restrictions on a superannuation fund's and an RSA provider's ability to use a member's tax file number (TFN) as the primary search key when locating amounts held in a fund by a member.
- Facilitating the use of a member's TFN as a means of locating amounts held by the member within a fund and thus improve the efficiency of funds' administration systems.
- Facilitating the use of a member's TFN for the purpose of consolidation of the member's superannuation interests both within and across superannuation entities.

ASFA is very supportive of this change as it will facilitate the introduction of processing efficiencies by funds.

Comments on Explanatory Memorandum

Examples 1.1 and 1.2 at paragraph 1.17 of the explanatory memorandum indicate that the consolidation process both within and across funds will operate on an 'opt-in' basis.

ASFA considers that further consideration should be given as to whether the arrangement be 'opt-in' or 'opt-out' and whether differing arrangements should apply depending on whether the consolidation is within a fund or across a fund. Funds' experience of member's responding to correspondence suggests that for 'within fund' consolidations the appropriate mechanism may be disclosure through the PDS and the member being given the option to opt-out option prior to the consolidation occurring.

ASFA requests that consideration be given to rewording of the explanatory statement such that development of an 'opt-out' arrangement is not precluded at this stage.

Other comments

While the changes introduced by the legislation will assist to improve processing efficiency within funds, ASFA would like to take this opportunity to raise some associated issues.

Confirmation that a quoted TFN belongs to that person

The current structure of the superannuation taxation provisions relies heavily on a person being correctly identified within the superannuation system. Central to this identification process is having the correct TFN for the person. Whilst the proposed legislative changes permit greater use of the TFN, they do not address the fundamental issue of whether a TFN quoted by the member or their employer is in fact that member's correct TFN.

Currently, sections 299TA of the SIS Act permits the ATO to advise a superannuation fund that a TFN is **not** the TFN of the person who quoted it. Sections 299TA and 299TB further permit the ATO to either advise the correct TFN for the member or to advise that it considers that the person does not have a TFN. What is absent is the ability of the ATO to positively confirm, on request, that a TFN 'quoted' by a person is that person's TFN.

To redress this situation, ASFA urges that consideration be given to amending section 8WB of the Tax Administration Act 1953 and the Privacy Guidelines 1992 such as to give the Commissioner of Taxation explicit power to confirm, for superannuation purposes, whether or not a TFN belongs to a specific person.

ASFA would see the confirmation process operating along the following lines:

- The quoted TFN and other identifying information (such as name, address and date of birth) would be provided to the ATO.
- Where the ATO considers that the quoted TFN was the person's TFN, the ATO would advise the enquirer accordingly.
- Where the ATO considered that the TFN did not belong to the person, they would utilise the provisions of S299TA and 299TB of SIS to advise the enquirer that the TFN was not that of the person. Where a 'correct' TFN is available, this would be provided to the enquirer as allowed by S299TA.

At this stage ASFA has not formed a view as to whether the TFN would be validated with the ATO by the employer or the superannuation fund (i.e. before the contribution can be made by the

employer or after the contribution has been received by the fund). If validated by the employer it may require additional legislative change.

However, the presence of such a facility would enable the enquirer to correctly determine whether the person had correctly quoted their TFN for superannuation purposes. This information, when provided to a superannuation provider, would enable the provider to correctly determine their legal capacity to accept non-concessional contributions in respect of the member/account holder and to correctly determine any obligation for withholding no-TFN tax from a member's account.

In addition to improving the integrity of the system, this would remove the considerable reverse workflows associated with the withholding of no-TFN tax and the repayment of non-concessional contributions where the ATO uses its powers under section 299TA and 299TB of the SIS Act to advise that a quoted TFN is not the TFN of the member at a time that can be some 18 months after the TFN is quoted. .

Removing the legislative restriction on the ATO's ability to provide such a service would create an opportunity for processing efficiencies for funds, would provide tangible benefits in reduced compliance costs to the ATO and would improve the integrity of the superannuation system going forward.

Consolidation of member accounts across funds

The explanatory memorandum, by way of examples 1.1 and 1.2, makes it clear that a primary objective of the legislative change is to facilitate consolidation of member accounts both within and across funds. However, these amendments of themselves will not achieve the objective of consolidation across funds for the following reasons:

- There is currently no process or mechanism by which a fund can obtain information on a complete member's holdings in another fund. Such information is not exchanged between funds and the ATO, which potentially holds such information, is prevented by law from disclosing such information to funds. While such a facility appears to be contemplated in example 1.2 there is no explanation as to how this process would occur.
- The current information available to the ATO on a member's holdings is limited to accounts that have received a contribution in the previous financial year. This information is reported in the Members Contributions Statement (MCS) report, and Lost Members report. Therefore, should a search facility on ATO records be available it would be limited to these accounts. ASFA considers that implementation of a full consolidation programme will require significant changes to the current reporting requirements, supported by legislative and significant system changes.
- Current legislation does not support the automatic release of a member's holdings on instruction by the "consolidating" fund. The current requirement is for the member to confirm that they are aware of the fees and costs associated with the closure of their account in the holding fund.

ASFA is also concerned that the Stronger Super proposals do not appear to contemplate a requirement to provide appropriate disclosures on impacts of consolidation on product benefits such as insurance.

In implementing the 'across funds' consolidation policy it may also be necessary to contemplate the possible activity that may occur in the industry. One potentially undesirable outcome would be the commencement across the industry of multiple consolidation marketing programmes run by all funds, resulting in a saturation of members with "tick here to consolidate" mailings. ASFA

would be interested in participating in a forum to consider how best to avoid this kind of problem

Provision of TFN by employers

Currently, the SG legislation explicitly states when a TFN must be provided by an employer to a superannuation fund. What is left understated is whether the TFN can be provided in other circumstances.

One of the stated purposes of this legislative change is to enable the TFN to be effectively used for the matching of contributions to member accounts.

ASFA requests that, in order to give effect to this recommendation, as part of the implementation of Stronger Super consideration be given to including a specific legislative reference that would permit an employer to provide an employee's TFN with every contribution.

Such a change would remove uncertainty for employers and others and improve the operational efficiency of the industry, as foreshadowed by the amendments proposed by the current bill.

Absence of industry standards

The issues raised above once again highlight the need for the superannuation industry to have standard data requirements and processes for functions that are standard across the industry. ASFA urges the government to consider the adoption of the Superannuation Industry Data and Payment Standards Governance Report prepared on behalf of the swimEC Council

Should you have any questions please contact our Principal Policy Adviser, Robert Hodge, on 02 8079 0806

Yours sincerely



David Graus

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