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Mr John L Schmidt
Chief Executive Officer
Australian Transaction Reports and Analysis Centre
PO Box 13173
Law Courts Post Office
Melbourne VIC 8010

**REQUEST FOR CONSIDERATION OF A RULE EXEMPTING THE CASHING OF A SUPERANNUATION BENEFIT
MADE UNDER A DEPARTING AUSTRALIA SUPERANNUATION PAYMENT (IN CERTAIN CIRCUMSTANCES)
FROM THE REQUIREMENT TO CONDUCT A CUSTOMER IDENTIFICATION PROCEDURE**

Dear Mr Schmidt

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission to the Australian Transaction Reports and Analysis Centre (AUSTRAC) seeking the creation of a Rule that would exempt a trustee of a superannuation fund, or an RSA provider from the requirement to undertake customer identification prior to cashing a benefit under the Departing Australia Superannuation Payment (DASP) system where the request is made through the Australian Taxation Office's on-line DASP payment application system.

About ASFA

The Association of Superannuation Funds of Australia (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. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

Overview of the DASP process

Sections 6.24A, 6.20A and 6.20B of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) requires superannuation trustees to cash the superannuation benefits of temporary Australian residents who have permanently departed Australia. Further, the SIS Regulations require the benefits to be cashed by the trustee within 28 days of receiving a written request from the member for the payment of the benefits, and upon satisfaction that the member's visa has ceased to be in effect and that the member has departed Australia.

Cashing a payment to a permanently departed temporary resident under regulations 6.24A, 6.20A and 6.20B of SIS is captured by the definition of designated service 43 in Table 1 of Section 6 of the AML/CTF Act. This means that under the AML/CTF Act and associated Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules), a customer identification procedure is required to be conducted before a payment can be made to a post-commencement customer (member) of the superannuation fund who has permanently departed Australia.

Applications for payment can be made by departed temporary residents in one of two ways: paper based application using an Australian Taxation Office (ATO) form which is completed by the member and sent directly to the superannuation fund for processing; or electronically using an on-line system administered by the ATO.

The forms provided by the ATO for paper based applications require the member to provide certified copies of identification documents to the superannuation fund with the application. These documents can be used by the fund to conduct a customer identification procedure prior to payment of the superannuation benefit. It is ASFA intention that the AML/CTF Act requirements with respect to these cases should remain unchanged.

The on-line application process is entirely electronic and does not require the member to provide any identification documents to either the ATO or the superannuation fund. Rather, the member is required to provide personal and visa details to the ATO on-line which are used by the ATO to establish the identity of the member and to obtain confirmation from the Department of Immigration and Citizenship (DIAC) that the member's visa has expired or been cancelled and that the member has departed Australia. Once the member's identify has been confirmed, and DIAC has provided the necessary confirmation, the request is forwarded to the superannuation funds for processing. Neither the ATO nor DIAC provides any documents or other information to the superannuation fund in support of these applications and which can be used to satisfy the AML/CTF requirement to conduct a customer identification procedure. It is with respect to these cases that ASFA is seeking the Rule.

Details of the exemption being sought by ASFA

On behalf of its member superannuation funds, ASFA is seeking an exemption from the requirement for trustees to conduct customer identification procedures prior to paying out superannuation benefits to temporary residents that have permanently departed Australia, where the application has been made through the ATO's on-line DASP system. The basis for this request for exemption are as follows:

1. The money laundering and terrorism financing risk associated with these payments is low.

ASFA contends that the money laundering / terrorism financing (ML/TF) risk associated with on-line payments made to temporary residents departing Australia is low for the following reasons:

- i. All applications made through the ATO's on-line system are subject to confirmation of the member's identify by the ATO and their immigration status with DIAC. The on-line process involves authorising the release of money to an individual whose identity has already been verified through the VISA application process.
- ii. Typically the superannuation benefit has been funded by superannuation guarantee (SG) contributions made by the member's employer while the member was employed in Australia. In addition, tax is withheld from the payment such that the total tax deducted from the superannuation contribution is at the rate of 46.5 percent. As such, the final payments to departing temporary residents are generally for small amounts (typically less than \$5,000).
- iii. Based on advice provided by our members, superannuation funds generally process only a small number of DASP on-line payments (in the vicinity of five per week or less).
- iv. Finally, superannuation funds generally make the payments by cheque payable to the member, with direct debits used only in limited exceptional circumstances.

As such, ASFA's view is that the ML/TF risk associated with requests made through the on-line DASP system is low. An additional customer identification procedure conducted by the superannuation fund is unnecessarily inefficient for all parties concerned and is unlikely to further mitigate this already low risk.

2. The customer identification requirements for such payments generally lead to a technical breach of the SIS Regulations.

Temporary residents are required to have first departed Australia before payments can be made to them under the DASP system. As a result, meeting the customer identification requirement generally results in a technical breach by the trustee of the requirement under the SIS Regulations to make the payment within

28 days of receiving a completed application form. This is because, in order to satisfy the requirement to conduct a customer identification procedure prior to making a payment to a departed resident, trustees of superannuation funds would, upon receiving the request for payment, need to write to the member to request certified copies of the member's identification documents. However, given that the member has already departed Australia, this process is extremely time consuming and often ineffective for some members, as they often find it exceedingly difficult (if not impossible) to locate individuals in overseas jurisdictions who are able to certify copies of documents under the AML/CTF Rules. The amount of time involved in members obtaining certified copies of customer identification documents makes it likely that trustees of superannuation funds will, in most instances, be unable to comply with the SIS Regulation requirement to process the payment within 28 days.

3. The administrative burden this creates, in particular for the member, is unreasonable.

As outlined above, the process of obtaining a customer identification procedure from a superannuation member who has departed Australia is time consuming and in some cases impossible. While there is some administrative burden for superannuation funds in writing to members to request customer identification documentation, there is a far greater burden for the member in obtaining and providing certified copies.

The requirement to provide certified copies is not referenced in the ATO's on-line DASP application system. The result will be that requests from the superannuation funds to provide certified copies of ID will be unexpected by the member, difficult (and possibly costly) to obtain due to the limited number of individuals outside of Australia who are able to certify documents, and will disadvantage members who are unable to obtain certified copies because they cannot access the individuals able to certify copies in their home country.

The delay which will be caused by obtaining certified copies could further disadvantage members because members are only able to apply directly to the superannuation fund for payment of their superannuation benefits for six months from the date they depart Australia. After six months the superannuation fund is required to transfer the benefits to the ATO, and once this has occurred the member must submit a new application to the ATO for the payment of their superannuation benefits. This means that if the process of obtaining identification from the member exceeds the six month period in which the member has to request payment of their benefits, the member will have to start a new application to the ATO.

ASFA contends that this process is at odds with the general Government policy of reuniting members with their superannuation benefits.

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Based on the reasons outlined above, ASFA requests that AUSTRAC consider the provision of an exemption to superannuation trustees from the requirement to conduct customer identification procedures for payments made through the ATO's online DASP system.

If you have any questions or comments on this matter, please feel free to contact Jon Echevarria, Policy Adviser on 02 8079 0859 or by email jechevarria@superannuation.asn.au.

Yours sincerely,



David Graus
General Manager, Policy and Industry Practice