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21 September 2011

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service

Mr Stephen E. Shay
Deputy Assistant Secretary for International Tax Affairs
U.S. Treasury Department

Mr Steven A. Musher
Associate Chief Counsel (International)
Internal Revenue Service

CC:PA:LPD:PR
Room 5203
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Mr Shulman, Mr Shay and Mr Musher,

Re: Foreign Account Tax Compliance Act (FATCA)

ASFA would like to provide the following comments in response to our meeting with representatives from Treasury and the Internal Revenue Service (IRS) earlier this year which elaborates further our submission of 23 December 2010 and takes into account our discussions this year.

In Notice 2011-34 on page 33, it was outlined that it remains the intention of the IRS and US treasury to carve out '*D. Other Categories of Deemed-Compliant FFIs'.*

Further submission

As requested during discussions with Treasury and IRS, we provide the following details concerning the treatment under section 1471 of the Internal Revenue Code (the Code) of certain entities including 'foreign retirement plans'.

In particular, Treasury and the IRS requested comments on:

I. **the typical structure of an Australian superannuation arrangement**

II. **proposed wording to be included in the definition of 'foreign retirement plan' that could be applied to exempt foreign plans throughout the world and not just Australian superannuation arrangements from FATCA.**

We note that this submission should be read in conjunction with our previous submission dated 23 December 2010.

As previously indicated, we submit that Australian superannuation entities should be excluded from the definition of FFI or should be deemed to meet the requirements of section 1471(b) pursuant to section 1471(b)(2). For Australian purposes, superannuation entities include regulated superannuation funds, approved deposit funds (ADFs) and pooled superannuation trust (PSTs). This is because of the regulatory requirements that these entities must satisfy to qualify as superannuation entities in Australia and the close inter-relationships of these entities may have (for example only other superannuation entities can invest into a PST).

As previously indicated, we also submit that investors in the following pose a low risk of tax evasion pursuant to section 1471(f) of the Code and should be exempt from withholding under section 1471(a):

1. superannuation policies issued by the superannuation class of a life company/friendly society;
2. RSAs; and
3. exempt public sector schemes
4. non-superannuation entities held 100% by superannuation entities.

As previously indicated, we also submit that if all Australian superannuation entities are deemed to be compliant with the requirements of section 1471(b), they should also be excluded from collecting all of the information and documentation to be passed on to some other entity in the investment chain for their withholding and reporting purposes.

We note that, similar to Australia, other jurisdictions around the world may have a variety of superannuation/retirement entities that should be excluded from the definition of FFI or should be deemed to meet the requirements of section 1471(b) pursuant to section 1471(b)(2). Where those entities are required to meet regulatory requirements to qualify as superannuation/retirement entities or there are close inter-relationships between those entities (eg. only other superannuation/retirement entities can invest into that entity), those entities should be excluded from the definition of FFI or should be deemed to meet the requirements of section 1471(b) pursuant to section 1471(b)(2).

In section 2 of the attached, we have included a suggested generic exemption that could be applied to superannuation/retirement entities in various jurisdictions throughout the world.

Non-superannuation entities held 100% by superannuation entities

As previously indicated, we also request that consideration be given to extending the above requested general exemption to entities that are owned 100% by Australian superannuation entities.

We previously submitted that **entities held 100% by Australian superannuation entities pose a low risk of tax evasion pursuant to section 1471(f) of the Code because of the nature on**

their investors and should be exempt from withholding under section 1471(a) in the same way as their superannuation investors. Such an exemption would reflect aspects of the Australian taxation law that extends tax concessions to entities which are 100% owned by Australian superannuation entities.

We note that, similar to Australia, other jurisdictions around the world may situations where superannuation/retirement entities own 100% of certain entities. We request that consideration be given to extending the above requested general exemption to entities that are owned 100% by superannuation/retirement vehicles in the same jurisdiction as the investment entity.

As with Australian entities that are held 100% by Australian superannuation entities, such investment entities would pose a low risk of tax evasion pursuant to section 1471(f) of the Code because of the nature on their investors and should be exempt from withholding under section 1471(a) in the same way as their superannuation/retirement investors. Such an exemption should reflect aspects of the local jurisdiction's taxation laws where that local jurisdiction extends tax concessions to entities that are 100% owned by local superannuation/retirement entities.

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If you have any queries in relation to the above submission, please contact Robert Hodge, Principal Policy Adviser, on +61 2 8079 0806.

Yours sincerely

D. Graus

Mr David Graus
General Manager, Policy and Industry Practice

Contents

1 Submission

1.1 Notice 2011 -34

As stated in Notice 2011-34, the following comment was made as to the status of the US Treasury and IRS's position on the exemption for foreign pension funds.

> *D. Other Categories of Deemed-Compliant FFIs*
>
> *As discussed in Notice 2010-60, Treasury and the IRS intend to issue guidance providing that certain foreign retirement plans pose a low risk of tax evasion under section 1471(f), and therefore payments beneficially owned by such retirement plans will be exempt from withholding under section 1471(a). Treasury and the IRS are still considering the many comments received regarding the types of foreign retirement plans that should be treated as posing a low risk of tax evasion under section 1471(f), and intend to provide further guidance on the types of foreign retirement plans that may qualify for such treatment. In addition, Treasury and the IRS intend to provide further guidance on foreign retirement plans or retirement accounts that may be deemed compliant under section 1471(b)(2).*

1.2 Specific issue

As outlined in section II, sub-section C of Notice 2010-60 there are a number of requirements to be met for a foreign retirement plan to be exempt from the withholding regime.

To be exempt, a retirement fund must:

(i) qualify as a retirement plan under the law of the country in which it is established,

(ii) be sponsored by a foreign employer, and

(iii) not allow U.S. participants or beneficiaries other than employees that worked for the foreign employer in the country in which such retirement plan is established during the period in which benefits accrued.

As noted in our previous submission, in an Australian context, it will be extremely unlikely that any Australian retirement fund would satisfy the above requirements for – particularly conditions (ii) and (iii) above. Therefore, most (if not all) Australian retirement funds will not be exempt from the FATCA provisions even though they pose a low risk of tax evasion.

We submit that entities within the Australian superannuation regime pose a low risk of tax evasion as it is highly unlikely that US persons would be use the Australian superannuation regime to evade US taxes for a number of reasons including:

- our preservation rules which restrict access to the person's superannuation until they have reached their preservation age (which ranges between 55 years and 60 years depending upon the individual's date of birth)

- limits on amounts of money that can be contributed to the Australian superannuation system

- tax penalties that are imposed for exceeding the contribution limits

- the tax imposed on non-residents taking their money out of an Australian superannuation arrangements

- the residency requirements that superannuation funds must meet to be considered to be an Australian superannuation fund

- restrictions on the types of investors that can invest in an Australian superannuation entity.

As outlined in our previous submission, the likelihood that Australian superannuation entities would satisfy the proposed exemption for foreign retirement funds is summarised in the following table:

Type of superannuation entity	Superannuation entity will satisfy		
	Retirement plan under the law of the country	Sponsored by a foreign employer	US participants
Complying superannuation fund	Yes	In limited circumstances	No
Non-complying superannuation fund	Yes	In limited circumstances	No
Exempt public sector funds	No	Yes	No
ADF	Yes	No	No
PST	No	No	Yes

Life company/friendly society superannuation policy/virtual PST arrangements	No	No	No
RSAs	No	No	No

As discussed, superannuation entities in other jurisdictions may also be faced with similar difficulties. As a result, a more broadly defined exemption relating to superannuation/retirement entities would be beneficial so that low risk entities are not burdened with the administrative requirements and compliance obligations that would otherwise arise as a result of the FATCA legislation.

2 Proposed amendments

Treasury and the IRS anticipate that a foreign retirement plan will be identified as posing a low risk of tax evasion only if the retirement plans:

(i) qualifies as a retirement plan under the law of the country in which it is established,

(ii) is sponsored by a foreign employer, and

(iii) does not allow U.S. participants or beneficiaries other than employees that worked for the foreign employer in the country in which such retirement plan is established during the period in which benefits accrued.

As previously submitted, we believe that for the purposes of section 1471(f)(4), in an Australian context, the following pose a low risk of tax evasion under section 1471(f)(4) and should be exempt from the FATCA provisions and should not be required to collection information and documentation for any purposes under the FATCA legislation:

(i) Australian superannuation entities as defined by section 10 of the Superannuation Industry (Supervision) Act

(ii) Australian exempt public sector superannuation schemes as defined by section 10 of the Superannuation Industry (Supervision) Act and 1.04(4A) – 1.04(4E) of the Superannuation Industry (Supervision) Regulations and listed in Schedule 1AA to the Superannuation Industry (Supervision) Regulations

(iii) Australian retirement savings accounts (RSAs) as defined in the Retirement Savings Accounts Act 1997

(iv) Australian virtual PST assets within the meaning of the 1997 Tax Act.

However, we understand that Treasury and the IRS are reluctant to provide exemptions on a country by country basis. As such, Treasury and the IRS are looking at a generic exemption which can be applied across all jurisdictions. Suggested wording for such an exemption is in section 2.1 below.

While there are many common superannuation/retirement fund features across various jurisdictions, there are also many differences and some jurisdictions are more mature than others. Therefore, we believe that the generic exemption should also provide the IRS with some discretion so that the IRS can exempt a foreign retirement plan or group of foreign retirement plans on the IRS is comfortable that the particular fund(s) pose a low risk of tax evasion. Such a discretionary power could be worded so that a foreign retirement arrangement is exempt from the FATCA provisions and should not be required to collect information and documentation for any purposes under the FATCA legislation where

1) the fund is specified by the IRS as posing a low risk of tax evasion or

2) the fund belongs to a class of funds that is specified by the IRS as posing a low risk of tax evasion.

We also submit that the exemption should also apply to entities that are 100% directly/indirectly held by above entities/arrangements that qualify as foreign retirement funds that are exempt from the FATCA provisions and not required to collection information and documentation for any purposes under the FATCA legislation. That is, the exemption should be available for an entity that is 100% owned collectively/individually by a number of foreign retirement entities in a particular jurisdiction.

2.1 Proposed amendment

We submit that the exemption from the FATCA provisions and the requirement to collection information and documentation for any purposes under the FATCA legislation should be drafted as follows:

An arrangement will be identified as posing a low risk of tax evasion only if:

1) *The arrangement is considered to be a foreign retirement arrangement where:*

   a) *The arrangement qualifies as a retirement plan under the law of the country in which it is established or*

   b) *The arrangement qualifies as a retirement arrangement under the law of the country in which it is established and is taxed in a similar manner as those arrangements that qualify as retirement plans or*

   c) *The arrangement qualifies as a retirement arrangement under the law of the country in which it is established and only other retirement arrangements can invest into that arrangement or*

   d) *The arrangement is operated for the purpose of providing retirement benefits where the arrangement is required under the law of the country in which it is established to be regulated in the same manner as retirement plans in that country or the responsible entity has entered into an agreement with the relevant government that confirms that the arrangement will be operated so that it conforms with the operating principles of the relevant government's retirement income policy applying to retirement plans in that jurisdiction*

2) *Where (a), (b), or (d) applies, the arrangement must also meet the following criteria:*

   a) *access to the retirement benefits must be restricted so that the individual can only take their retirement benefits once they have reached the generally accepted legislated age for the release of those benefits in the relevant jurisdiction. This minimum age should must be at least 55 years*[1]

   b) *there are restrictions on the acceptance of contributions by the retirement arrangements including that the arrangement can only accept contributions if it has a unique identifier (such as a tax file number) for the relevant member that can be used as an identifier by the relevant tax authority*

   c) *either contributions received or retirement benefits paid by the arrangement must be reported to the home country revenue authority*

   d) *the relevant home country legislation imposes restrictions on the amount of contributions or retirement benefits that can be accepted/paid by the arrangement that receive tax concessional status (for example, contribution caps or reasonable benefit limits (or a combination))*

   e) *penalty taxes apply where a member accesses his/her benefits early (either legally or illegally) including if the individual is departing from retirement arrangement's home country*

   f) *the revenue authority of the home country of the arrangement has entered into an agreement with the IRS regarding the exchange of information (including retirement contributions/benefits information)*[2].

In addition to the above:

1. the IRS should be able to exercise its discretion to specify that a retirement arrangement poses a low risk of tax evasion or that the arrangement belongs to a class of arrangements that pose a low risk of tax evasion and therefore exempt from the FATCA provisions and not required to collection information and documentation for any purposes under the FATCA legislation;

2. any entities that are 100% directly/indirectly held by foreign retirement arrangements that satisfy the above of the same jurisdiction as the investment entity should be exempt from the FATCA provisions and not required to collection information and documentation for any purposes under the FATCA legislation.

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[1] For example, in the US, benefits must be kept in the plan or an equivalent tax deferred plan until the employee reaches 59½ years of age. In Australia, this age is 55 years which is being increased to 60 years over time.

[2] This should be a transitional requirement to give relevant revenue authorities time to agree to such an exchange of information.

2.2 Application of the proposed amendment to Australian superannuation arrangements

Based on the above definition, we believe that the above definition would apply to Australian superannuation arrangements in the following manner.

Type of superannuation entity	Superannuation arrangement will satisfy		
	Foreign retirement arrangement	Operating restrictions	Discretion
Complying superannuation fund	Yes	yes	Could apply if required
Non-complying superannuation fund	Yes	Yes	Could apply if required
Exempt public sector funds	Yes	Yes	Could apply if required
ADF	Yes	Yes	Could apply if required
PST	Yes	N/A	Could apply if required
Life company/friendly society superannuation policy/virtual PST arrangements	Yes	Yes	Could apply if required
RSAs	Yes	Yes	Could apply if required

3 Key requirements

In Australia, superannuation has existed as a form of savings for more than a century. For most of the time, it applied to a minority of employees, generally higher paid white collar staff in large corporations, employees in the finance sector, public servants and members of the Defence Force. However, from the 1970s superannuation started to become more widely available as a result of claims lodged in the industrial relations arena.

Australia's current compulsory superannuation guarantee (SG) regime was introduced in July 1992 and requires all employers to make tax-deductible superannuation contributions on behalf of their employees and certain contractors. The SG regime commenced with a minimum employer contribution rate of 3% of salary which increased over a ten-year period to the current minimum rate of 9 per cent. In May 2010, the Australian Government announced a further increase in the SG rate from 9% to 12% by 2020.

Employers and individual employees can also make voluntary contributions to their superannuation. These contributions are subject to income tax concessions, up to certain limits.

Prior to the introduction of the SG regime, most Australian's superannuation were in defined benefit funds, however today the vast majority of superannuation funds are accumulation or defined contribution. By 2005-06, 97 per cent of members were in superannuation funds that provided either accumulation benefits or a mixture of accumulation benefits and defined benefits[3]

As a result of the above changes, the Australian superannuation system is one of the most mature superannuation/retirement savings regimes in the world. As a result of this maturity, the Australian super arrangements represent a low risk of tax evasion for FATCA purposes. It also means that there is no 'one size fits all' exemption that can be built to exempt Australian superannuation arrangements from the FATCA regime. This is because the traditional arrangements for the set-up of a superannuation entity (such as employer-sponsored arrangements) are becoming increasing uncommon in Australia. Appendix B provides an outline of some of the typical superannuation structures in Australia.

There are a number of safe-guards in the Australian super regime to ensure that superannuation in Australian is used for retirement purposes.

The following is a very brief summary of some of the key requirements.

[3] APRA, "A recent history of superannuation in Australia" APRA Insights Issue Two 2007.

3.1 Roles and responsibilities

The roles and responsibilities of key stakeholders in the Australian superannuation system are clearly distinguishable. Some of the key roles/responsibilities are as follows:

Super fund

Usually a trust, established primarily to provide benefits for members on their retirement, or alternatively, on their resignation, death, disablement or other specified events. Superannuation funds are usually governed by a trust deed and administered by trustees.

Other super entities are generally set-up as trusts or as virtual trusts. Common purpose of these entities is to provide retirement benefits to members or to support the funds providing retirement to their members (eg. PSTs).

Trustee

Usually a company appointed under the terms of the trust deed to hold the trust property for the beneficiaries and to make sure that the plan is operated in accordance with the trust deed. Generally, trustees owe a fiduciary duty to the beneficiaries. Superannuation trustees must also comply with certain legislative duties.

Generally, members of a super fund are not trustee directors of the fund except to fulfil legislative requirements (eg. trustee equal representation rules).

The trustee ultimately makes all the decisions about the fund's operations including investments and benefit payments.

Member

A person for whom superannuation contributions have or are being made and held on trust, and who will in the future, or is already, receiving benefits from the fund. Members can be active (if contributions are currently being made) or inactive (no current contributions).

Custodian

An entity holding assets on behalf of another. For a super fund, the custodian has the title to the fund assets but the powers of investment management remain in the ordinary trustees. A master custodian aggregates a series of portfolios; a global custodian holds assets for clients in a number of different countries. Usually a custodian is a company (e.g. trustee company, bank or specialist custodian company).

Compulsory contributions

Employers are required to provide a minimum level of superannuation support for most employees under the SG

	legislation. Employers may also have other compulsory contributions obligations that they must meet. Under the SG legislation, employers are required to provide their employee's with choice of fund.
Choice of fund	Refers to the capacity of employees to nominate the super arrangement into which compulsory employer contributions must be made.
Investment choice	It is not compulsory for trustees to provide investment choice. However, most funds provide at least a limited choice to their members. There could be a range of investment choices offered by the trustee to the members. Generally, these are investment strategy choices. Members are able to nominate the investment choice that they would like their benefits invested in. The trustee would generally implement a member's investment choice. However, the trustee retains the ultimate responsibility for the investments of the fund including decisions regarding buying/selling assets.

Appendix B sets out some standard structures of Australian super arrangements.

3.2 Sole purpose test

The sole purpose requirements contained in section 62 of SIS (the "sole purpose test") limit the provision of superannuation benefits to a range of prescribed or approved retirement or retirement related circumstances. The test is the legislative expression of the Australian government's retirement income objective which is the key rationale for superannuation savings.

The sole purpose test provides that a regulated superannuation fund must be maintained solely for at least one of the legislated core purposes or for at least one of those core purposes and for one or more of the prescribed or approved ancillary purposes. It is a contravention of the sole purpose test for a superannuation fund to be maintained only for one or more of the ancillary purposes.

Essentially the "core purposes" are the provision of benefits on or after the member's retirement, reaching age 65 or earlier death. Similarly, the "ancillary purposes" are the provision of employment termination insurance, salary continuance (on a member's cessation of work because of ill health), reversionary benefits and other approved benefits on or after an appropriate condition has been met.

The sole purpose test and the other operating standards in the SIS legislation prohibit the use of concessionally taxed superannuation vehicles for purposes such as providing pre-retirement benefits to members, benefits to employer-sponsors or facilitating estate planning. The sole purpose test, with the prescribed SIS investment restrictions, ensures that the retirement income objective is paramount.

3.3 Superannuation investment structure

In Australia, superannuation entities generally operate as trusts with trustees being responsible for the prudential operation (including regulatory compliance) of their entities and for the investments of the fund including the formulation and implementation of the investment strategy of the entity (amongst other things).

The trustee carries out all transactions of the trust in its own name and must sign all documents for and on behalf of the trust. The trust deed of the fund sets out the duties and obligations of the trustee in addition to the requirements on the SIS legislation. Importantly, trustees are required to act in the best interests of its members/unitholders.

The trustee is the legal owner of the trust property although not the beneficial owner. Most superannuation entities are required to use custodians to hold their assets. The trustees are not subject to the direction of a member or employer-sponsor except in very limited circumstances as set out in the SIS legislation.

3.4 Preservation rules

The preservation rules operate in conjunction with the sole purpose test and were one of the earlier key changes to the Australian super system which has ensured that the Australian super is being used for retirement purposes. The preservation rules have also been a significant deterrent for people looking to avoid tax (even from an Australian context) because the money is locked away in the superannuation regime until the preservation rules are satisfied.

Under the preservation rules, superannuation benefits cannot be paid until the member has reached his/her preservation age. When the preservation rules were introduced, grandfathering rules were also introduced so that pre-existing superannuation entitlements were not subject to the preservation rules. However, because the preservation rules have been operational since the mid-1980s, it is becoming increasing unlikely that anyone has Australian super benefits that are not subject to the preservation rules and even if they do, it is only a small portion of their benefits that would not be preserved.

Originally, the preservation age was 55 years which reflected the generally accepted age for early retirement in Australia at the time the preservation rules were introduced. The preservation age is now being increased to age 60 based on an individual's date of birth as follows:

Date of birth	Preservation age
Before 1 July 1960	55 years
1 July 1960 to 30 June 1961	56 years
1 July 1961 to 30 June 1962	57 years
1 July 1962 to 30 June 1963	58 years
1 July 1963 to 30 June 1964	59 years
After 30 June 1964	60 years

3.5 Acceptance of contributions

There are restrictions on the types of contributions that can be accepted by a superannuation arrangement including:

- the age test
- the work test
- the contribution threshold test for personal contributions
- the tax file number (TFN) test.

Where a superannuation entity accepts contributions, that entity is required to report those contributions to the Australian Taxation office (the ATO) on an annual basis so that the ATO can monitor the contribution capping rules (refer below) and issue any assessments for breaches of those caps to the relevant members.

The contributions that can be made to superannuation include:

Contribution type	Description
SG contributions	Compulsory superannuation payable by employers to the chosen superannuation fund of their employee at a rate of 9% of their ordinary times earnings per year
Employer matching contributions	Contributions required to be paid by employers under employment contracts based on contributions that the employee may be making (eg if the employee

Contribution type	Description
	contributes 3% into superannuation the employer will match that by contributing 12% (ie 9% required under the SG Act and an additional 3%))
Voluntary employer contributions	Contributions made to the superannuation fund by the employer in addition to any compulsory requirements including salary-sacrifice contributions
Voluntary employee contributions	Contributions made to the superannuation fund by the member from their after tax income
Compulsory employee contributions	Some superannuation arrangements require employees to make certain contributions
Self employed contributions	Contributions made to the superannuation fund by a self employed member
Spouse contributions	Contributions made to the superannuation fund by the member for their spouse from after tax income
Government co-contributions	Contributions made by the Government for low-income earners who contribute contributions from their after tax income

3.6 Contribution capping rules

Contribution caps apply limit the amount of superannuation contributions made for individual's during a financial year (from 1 July LY to 30 June CY in Australia). The policy intent of the capping rules is to limit the amount of contributions that can be made in a year while encouraging employees to save for their retirement over their working life. These caps apply on a "use-it-or-lose-it" basis.

Where the contributions for an individual exceed the relevant cap, the excess amount is subject to additional tax. The cap which applies depends upon whether the contributions are:

- concessional contributions- which are typically employer contributions and are included in the assessable income of the super entity (eg, SG contributions, salary sacrificed amounts and deductible personal super contributions where the person in substantially self-employed and meets certain conditions)

- non-concessional contributions - which are generally member personal contributions and are not included in the super fund's assessable income (eg, personal contributions made from the person's after-tax income).

The relevant caps are as follows:

	Concessional cap	Transitional concessional cap*	Non-concessional cap
2010-11 and 2009-10 financial years	$25,000	$50,000	$150,000
2008-09 and 2007-08 financial years	$50,000	$100,000	$150,000
Tax on amounts over the cap	31.5% (in addition to usual 15% contributions tax paid. Effective tax rate is equal to Australia's top marginal tax rate + Medicare)	31.5% (in addition to usual 15% contributions tax paid. Effective tax rate is equal to Australia's top marginal tax rate + Medicare)	46.5%
Other information	Any concessional contributions in excess of the cap will also count towards the individual's non-concessional contributions cap	Any concessional contributions in excess of the cap will also count towards the individual's non-concessional contributions cap	If the individual is under 65 years old at any time during the financial year, the individual may be able to bring forward the next two years of contributions, but certain conditions apply. This effectively allows the individual to contribute up to three times the cap at once, or at any time during the three financial years

* The transitional concessional contributions cap is for those who are 50 years old or older on 30 June in a financial year and is available until 30 June 2012 and is not indexed. Consideration is being given to increasing the concessional cap from 1 July 2012 for the over 50s provided the individual's superannuation totals less than $500,000.

There may be instances where the effective tax rate applying to an excess contribution is 93.5%.

4 Exchange of information between the Regulators

A number of regulatory bodies are involved with the regulation of the Australian super regime including:

- The **Australian Prudential Regulation Authority (APRA)** is the Commonwealth agency which is responsible for prudential regulation of banks, life insurance companies, general insurance companies and superannuation entities. APRA receives regular information from superannuation entities about their operations including an annual APRA return.

- The **Australian Securities and Investments Commission (ASIC)** is now responsible for consumer protection in financial products covering superannuation, life insurance, general insurance and deposit taking (but not currently credit). This includes the provision of information to fund members during their membership.

- The **Australian Taxation Office (ATO)** the Commonwealth body which administers Australia's taxation system. The ATO also administers the SG legislation, superannuation contributions cap regime, lost members register, government co-contributions and SIS Act provisions relating to self managed superannuation funds (SMSFs).

- The **Superannuation Complaints Tribunal (SCT)** administers the Superannuation (Resolution of Complaints) Act and is the statutory body established to deal with complaints about decisions of superannuation fund trustees and RSA providers affecting the rights and benefits of individual beneficiaries.

- The **Australian Transactions Report and Analysis Centre (AUSTRAC)** is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit. AUSTRAC works with Australian industries and businesses in their compliance with anti-money laundering and counter-terrorism financing legislation. AUSTRAC passes information on to other government agencies to help them act against tax evasion, organised crime, money laundering, and welfare fraud.

As you will note from the above, the Australian superannuation industry is heavily regulated and financial information is provided to many regulatory bodies.

We provide the following comments without prejudicing our submission to exempt Australian retirement arrangements from the FATCA regime. If Treasury and the IRS are concerned about potential tax leakage within the Australian super industry, we recommend that Treasury and the IRS explore an information exchange arrangement with the Australian regulators (eg. the ATO keeps records of all contributions made for each individual during the year).

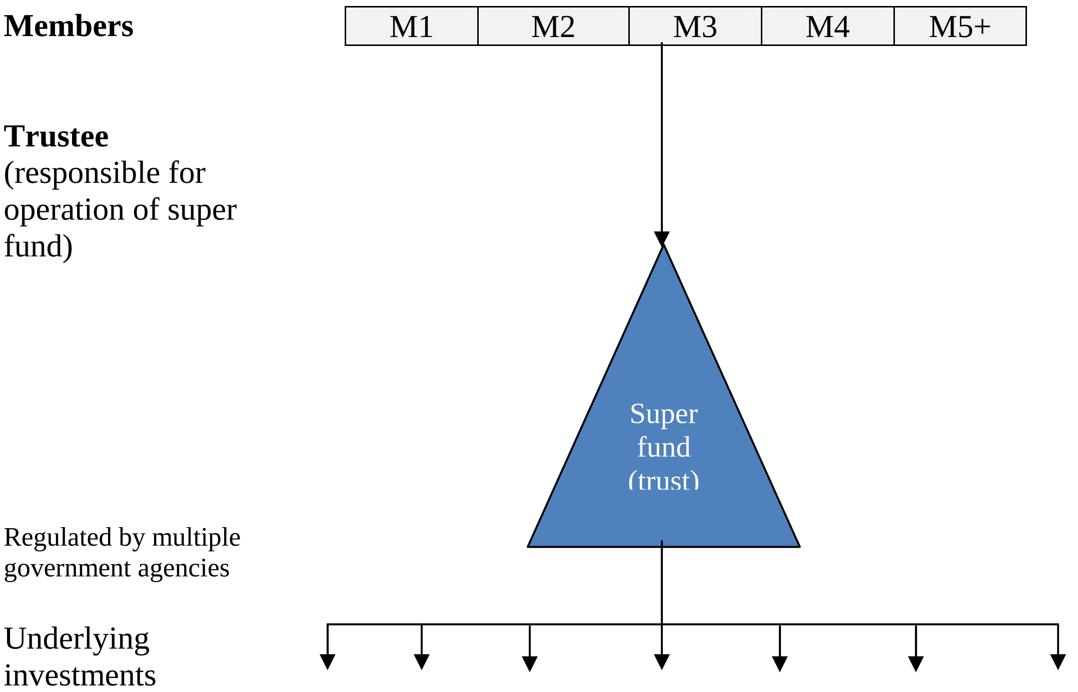
If the definition of foreign retirement plan is not expanded to exempt the vast majority (if not all) Australian super arrangements, Australian super arrangements will be required to implement and maintain complex administrative systems to comply with the FATCA legislation. The use of information exchange arrangements would help reduce the administration complexity and the costs of Australian super arrangements.

Appendix A – Abbreviations

Abbreviation	Refers to:
ADF	Approved deposit fund
APRA	Australian Prudential Regulation Authority
ASFA	The Association of Superannuation Funds of Australia
ATO	Australian Taxation Office
FFI	Foreign financial institution
FSC	Financial Services Council
IRS	Internal Revenue Service
PST	Pooled superannuation trust
RSA	Retirement savings account
SG	Superannuation Guarantee
SIS	Superannuation Industry (Supervision)
SMSF	Self-managed superannuation fund

Appendix B – Superannuation fund – standard structures

Example 1 – Simple super fund structure



Underlying investments for any super structure could include:

- Different investments relating to different asset classes that the trustees have decided to invest in
- These investment structures of the investments varies and could include:
  - Direct investments, trusts, partnerships, LLPs, LLCs, foreign hybrids
  - Other super entities (PSTs)
  - Super life policies (investment component)
- Where the fund invests overseas, different jurisdictions could be involved.

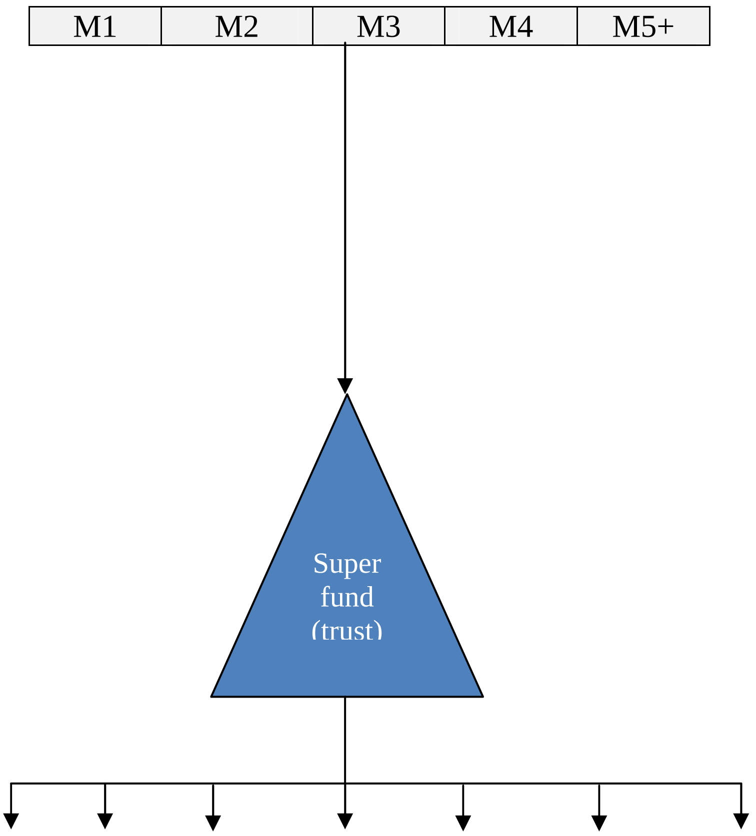
Example 2 – Stand-alone structure

Members
(single source – eg. single employer-sponsor)

Trustee
(responsible for operation of super fund)

Regulated by multiple government agencies

Underlying investments



Examples:

- Single employer funds

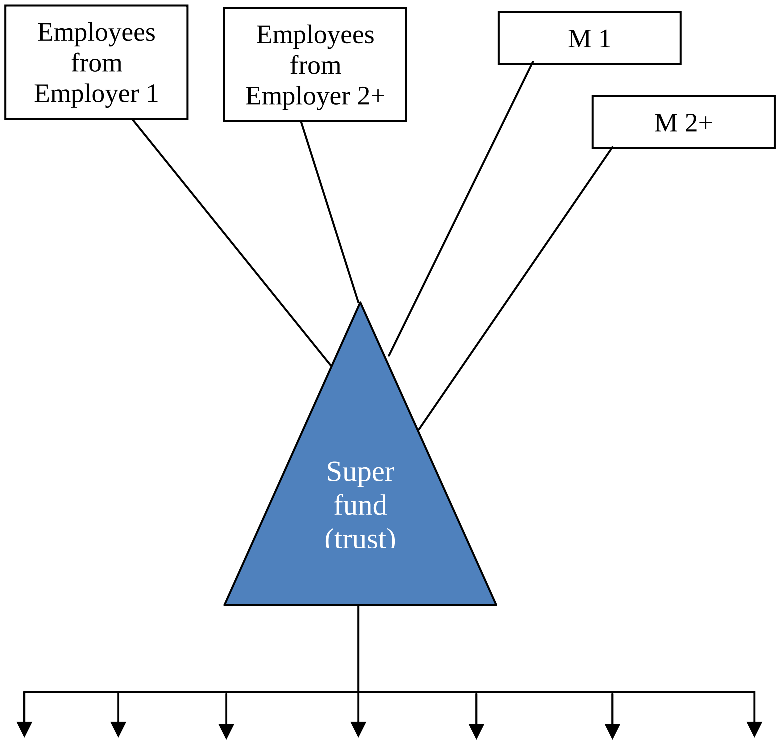
Example 3 – Master trust structure

Members
(multiple source)

Trustee
(responsible for operation of super fund)

Regulated by multiple government agencies

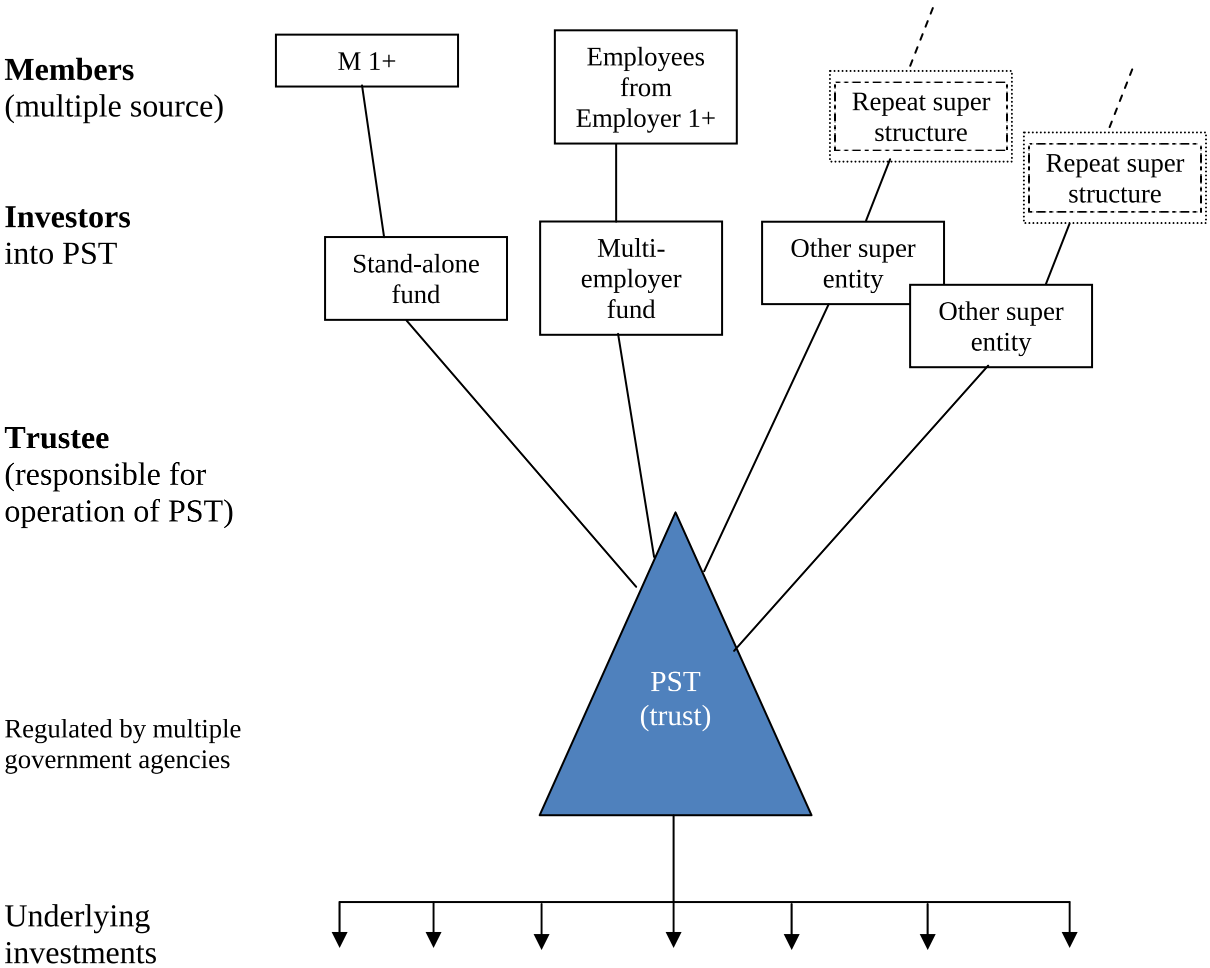
Underlying investments



Examples:

- Multi-employer funds
- Industry based funds
- Public offer funds

Example 4 – PST structure



NB. Life company/friendly society superannuation policy/virtual PST arrangements can be depicted in a similar way.