

16 September 2011

The Information Commissioner
Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

Email: consultation@oaic.gov.au

Dear Commissioner,

REVIEW OF THE TAX FILE NUMBER GUIDELINES CONSULTATION PAPER

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in relation to Review of the Tax File Number Guidelines Consultation Paper (Consultation Paper).

About ASFA

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 our service provider membership, represent over 90% of the 12 million Australians with superannuation.

Comments on the Consultation Paper

ASFA would like to make the following comments with respect to the Consultation Paper. References to paragraph numbers are as per the Consultation Paper.

1. DRAFT REVISED TAX FILE NUMBER (TFN) GUIDELINES

Introduction

It should be noted that, in the context of superannuation, Part 25A of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) also contains rules and restrictions with respect to the quotation, use and transfer of TFNs.

Furthermore, under the SIS Act, the Australian Prudential Regulation Authority (APRA) can make legislative instruments which are TFN approvals, which approve the manner of quoting TFNs. The most recent legislative instrument made under the SIS Act was *Superannuation Industry (Supervision) Tax File Number approval No. 1 of 2007* dated 27 June 2007.

Accordingly, reference to these should be made in the introduction to the TFN Guidelines.

Guideline 2 – General

2.4 We would suggest substituting “who chooses not to quote their TFN” in lieu of “in doing this”.

Guideline 3 – Collection of tax file number information

3.2 It should be noted that the trustees of superannuation funds are also required to comply with *Superannuation Industry (Supervision) Tax File Number approval No. 1 of 2007* (TFN Approval). The TFN approval does not inform individuals of the purpose(s) for which the TFN is requested or collected.

Whilst the TFN approval acknowledges in a note at the end that: -

“In addition to the above, a trustee must also comply with any other TFN obligations in Part 25A of the SIS Act and with the Tax File Number Guidelines issued by the Privacy Commissioner under section 17 of the Privacy Act 1988”,

given the reliance placed on the TFN Approval by trustees it may be prudent to liaise with APRA with a view to their making a new TFN Approval which includes a requirement to disclose the purposes for which TFNs are requested or collected within superannuation.

Guideline 6 – Storage, security and destruction of tax file number information

6.2 ASFA notes that ‘tax file number information’ means information that records the tax file number of a person in a manner connecting it with the person’s identity. While it may not be necessary for the guidelines to go into this level of detail, ASFA considers it important that the Information Commissioner acknowledge that it would be unreasonable to require TFN recipients to destroy or de-identify TFN information stored on computer systems, in back - up files or in hard copy documents which have been archived.

This is especially the case where the time when the TFN recipient is no longer required by law to retain the information is a function of an unknown variable, which in the case of the superannuation system is generally after the expiry of a period of years after a member takes their final benefit payment. As such, it is usually impossible to predict at the time the data is entered into the system or hard copy documents are archived, during the course of a member’s membership of the superannuation fund, when access to such information will no longer be required.

Additionally, altering back - up data files would defeat the fundamental business purpose of creating back - up files in the first place.

2. GUIDANCE MATERIAL - INFORMATION SHEET FEATURING FAQs

Part B - For Tax File Number Recipients

5. Can anyone ask for and receive an individual’s TFN?

The draft information statement states that: -

“The ATO and APRA are required under the TFN Guidelines to maintain a list of those people, agencies and organisations allowed to ask for and receive TFNs, what they will do with it and who they can give it to”.

Use of the phrase “list of those people, agencies and organisations” could serve to imply that the people, agencies and organisations are listed by name. As the TFN Guidelines refer to maintaining a list of the ‘classes’ ASFA requests that in the above paragraph in the guidance material the word ‘those’ be replaced with ‘the classes of’.

7. When can I collect an individual's TFN?

Example

In the example, the relevance of restricting the handing out of the form to "during office hours" is unclear.

8. How do the TFN Guidelines and other privacy obligations interact?

Given that the SIS Act also contains rules and restrictions with respect to the quotation, use and transfer of TFNs we suggest adding a specific reference to the relevant superannuation law to this FAQ.

11. How can my agency or organisation protect the security of TFNs?

Computer and network security

The draft guidelines states that the security of TFNs could be protected by: -

"separately storing, processing and transmitting TFNs from other information handled by the agency or the organisation".

In a number of cases this simply is not feasible to achieve – the TFN frequently is intrinsically linked with other information, including TFN information, other personal identifying information and often financial information. This is particularly the situation with the reporting of superannuation contributions information between employers and superannuation funds and superannuation funds and the ATO.

13 What is involved in securely disposing of TFN information?

We would suggest substituting the phrase "make reasonable efforts to" in lieu of the word "should" in the initial sentence. The TFN Guidelines themselves state at 6.2 that: -

"TFN recipients must take reasonable steps to securely destroy or permanently de-identify tax file number information" (emphasis added by underlining).

As stated above, it is not always possible to destroy or de-identify all TFN information.

3. CLASSES OF LAWFUL TAX FILE RECIPIENTS

We note that the proposed definition of "Approved recipient", which reflects the current definition, states that: -

"Approved recipient means a TFN recipient who:

- (a) is engaged by an **authorised recipient** to provide services where it is reasonably necessary to have access to **tax file number information**; or*
- (b) has obtained an individual's consent to access their **tax file number**, to help manage that individual's **taxation, superannuation or personal assistance affairs**".*

The employer terms and conditions of use governing the Small Business Superannuation Clearing House, run by Medicare Australia, states at clause 2 that the employer: -

"...on behalf of my business, appoint Medicare Australia as my business' agent to inform the trustees of the relevant superannuation funds of the employee tax file numbers that I supply to Medicare Australia".

While it may be possible to argue that Medicare is an approved recipient with respect to the employers, who are in turn authorised recipients, ASFA suggests that for the avoidance of doubt it may be preferable to specify Medicare Australia as a lawful tax file number recipient.

* * * * *

We thank you for providing us the opportunity to make this submission and trust that the information contained in this submission is of value. We would be happy to provide you with further information or to discuss our submission with you.

If you have any queries or comments regarding the contents of our submission, please contact Fiona Galbraith, Senior Policy Adviser on (03) 9225 - 4021 or via e-mail to fgalbraith@superannuation.asn.au.

Yours sincerely



David Graus
General Manager, Policy and Industry Practice