

The Association of Superannuation Funds of Australia Limited
ABN 29 002 786 290
ASFA Secretariat
PO Box 1485, Sydney NSW 2001
p: 02 9264 9300 (1800 812 798 outside Sydney)
f: 02 9264 8824
w: www.superannuation.asn.au



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Mr. Chris Denney
Senior Project Adviser - SuperStream
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: chris.denney@treasury.gov.au
strongersuper@treasury.gov.au

Dear Chris,

EXPOSURE DRAFT – USING TAX FILE NUMBERS AS A PRIMARY LOCATOR AND TO FACILITATE ACCOUNT CONSOLIDATION

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

The Association of Superannuation Funds of Australia (ASFA) is a non-profit, non-political national organisation whose mission is to advance effective retirement outcomes for members of superannuation funds through research and advocacy. We focus on those issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds as well service providers some of whom deal with self managed superannuation funds (SMSFs), has over 90% of the approximately 12 million Australians with superannuation as members. ASFA members manage or advise on the bulk of the \$1.3 trillion in superannuation assets as at September 2010. ASFA is the only organisation that represents all types of superannuation funds and associated service providers.

Comments on the proposal

ASFA is supportive of the proposed regulation change as it will facilitate the identification of members with multiple accounts and the consolidation of those accounts where it is to the benefit of the member.

Comments on the exposure draft regulations

We have reviewed the exposure draft regulations and explanatory commentary.

They deal with actions a trustee can take with respect to a quoted TFN. For this purpose:

- ‘Quoted’ includes TFNs provided to the trustee by the member, a potential member, an employer (the majority of cases) another trustee and the ATO.
- Quoted ‘for superannuation purposes’ means for the purposes of administering the fund and its accounts in accordance with the SIS Act and Regulations.

Below is our interpretation of, and associated comments on, what the proposed regulations will enable a superannuation fund trustee to do with respect to a TFN quoted both before and after 1 July 2011:

Regulation 6.49(1)(a) and (2)

- A trustee may use a TFN, to locate in the records of the fund amounts held by a member.

Member consent to such activity is provided by virtue of the member having ‘quoted their TFN for superannuation purposes’ (regulation 6.41(2)).

As part of this ‘location’ process a fund could undertake a search of their records (using the TFN) to create listings of members with multiple accounts.

NB. One outcome of this process could be the uncovering of situations where the same TFN had been quoted by multiple persons. In such situations the fund would be obliged (under taxation law dealing with accurate and complete reporting of information) to resolve those cases and either determine the correct TFN or remove the TFN from the account record before next submitting an MCS file to the ATO.

We note that this is a significant change from the current (pre 1 January 2012) situation whereby the restrictions on the use of TFNs in Part 25A of SIS prevent a fund from undertaking such searches based on TFNs and is thus effectively prevents trustees from detecting and resolving such cases.

Regulation 6.49(1)(b) and regulation 6.50(1)(a)

- A trustee may use a TFN to search the ATO online superannuation facility to determine if a member holds accounts in another superannuation entity or an RSA.

The term ‘Australian Taxation Office online superannuation facility’ is not defined.

We understand that for the purpose of regulation 6.50, the ‘Australian Taxation Office online superannuation facility’ will be a new comprehensive database of all superannuation accounts as reported to the ATO through the (proposed) expanded MCS reporting process combined with the information currently accessed through the ATO SuperMatch facility.

Currently the ATO offers an online facility called SuperMatch which contains records of lost member accounts recorded on the lost members register (LMR), superannuation guarantee amounts held by the ATO and super monies the ATO holds on behalf of members in the superannuation holding accounts (SHA) special account. Funds use the SuperMatch facility to search for such amounts. Under the terms of the participation

agreement with the ATO, a fund can only use the SuperMatch facility having first notified the members whose details are provided to the ATO that it will be undertaking the search and will be providing the member's TFN and other information to the ATO for the purpose of undertaking the search¹.

The regulations appear to be silent on what form of member consent is required prior to undertaking a search on the expanded ATO superannuation facility.

It is unclear as to whether it is intended that:

- as with the agreement with the ATO to use their SuperMatch facility, funds will be required to sign an agreement stating that they will notify members in advance of undertaking such a search before using this new ATO facility, or
- fund trustees will be required to get express consent prior to undertaking the search

The Explanatory Commentary does not provide assistance in this respect. Currently it states that the consent is provided by subregulation 6.49(2) (effectively by the quotation of a TFN for superannuation purposes). However, the operation of this subregulation is expressly limited to searches undertaken under subparagraph 6.49(1)(a). That is, the deemed consent does not extend to subparagraph 6.49(1)(b).

ASFA has a strong preference that to gain the appropriate consent to a paragraph 6.50(1)(a) search funds should be able to use the method currently used in SuperMatch searches. That is, funds must first advise those members to be included in the search process that they propose to undertake the search and will be providing the member's details and their TFN to the ATO for that purpose.

To provide clarity around this particular consent issue, ASFA requests that either:

- The regulations be amended to clearly set out the consent process (positive consent or deemed consent through notification of intended action) required for accessing the ATO Online Search Facility; or
- The Explanatory Commentary be amended to correctly reflect the operation of the law and expanded to include a description of the process for accessing the ATO Online Superannuation Facility. Such description should be in a manner that provides clarity to fund trustees and RSA providers as to how the member consent process will operate in this context.

A separate, though closely associated question, is the situation regarding accounts held by an Eligible Rollover Fund (ERF) and other entities where the member is uncontactable. Many trustees of ERFs consider it a fundamental duty to reunite the member with these accounts and to consolidate the member's benefits with an active account. The absence of deemed consent in respect of such members will restrict the ability of ERF trustees to carry out this important function.

¹ A declaration to this effect is required as part of the agreement for the ATO to undertake the search.

ASFA requests that consideration be given to the need for special provisions to cover these cases or to the need for guidance on how such cases may be resolved without consent.

We note that such a search of the ATO online Superannuation Facility cannot be used by an entity to initiate a rollover, but is merely a precursor to providing ATO sourced information to a member and seeking their consent to initiate a rollover of an account either from or to another fund on the member's behalf.

Regulation 6.49(1)(b) and 6.50(1)(b)

- A trustee may, with the express consent in writing of the member with respect to a specified superannuation entity or RSA, seek from that entity (and only that entity) information about any accounts the entity may hold for the member.

As the search is being undertaken at the request of the member (the trustee is acting in the capacity of an agent), the recipient trustee or RSA provider is required to respond to the request and to provide the details of any located accounts for the member.

We note that such a search cannot be used to trigger a rollover, but is merely a precursor to providing information to a member which may result in the member initiating a rollover of an account from another fund.

Although supportive of the policy approach, ASFA has concerns about the requirement for the request to be 'in writing'.

A significant feature of the Stronger Super reforms is the adoption of electronic commerce to facilitate efficient administration. In this context, ASFA seeks a wording amendment to facilitate such consent being received in ways other than 'in writing'.

Some suggested ways include:

- Over the phone where the member has first gone through a proof of identity check.
- Via an online form where the member has logged into their member account through a fund controlled secure port.
- Via a recorded instruction or IVR function within a call centre, where a member agrees by pressing a number on a phone key pad, or by voice recognition "yes" or "no".

ASFA suggests that wording similar to the following should be adopted so as to facilitate the adoption of a broader range of methods of obtain the requisite consent:

(b) contacting an RSA provider or superannuation entity at the direction of and with the express consent of the beneficiary.

*

If you have any queries or comments regarding the contents of our submission, please contact our Principal Policy Adviser, Robert Hodge, on (02) 8079 0806 or by email to rhodge@superannuation.asn.au .

Yours sincerely

A handwritten signature in black ink that reads "D. Graus". The signature is written in a cursive style with a large initial "D" and a long, sweeping tail.

David Graus
General Manager, Policy and Industry Practice