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

Email: DisplayMembership@treasury.gov.au

Dear Manager,

EXPOSURE DRAFT: DISCLOSURE OF SUPERANNUATION INFORMATION

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in response to the call for comments on the above exposure draft legislation and explanatory statement.

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

Comments on the Measure

We note the proposal to amend the secrecy provisions in Division 355 of Schedule 1 to the *Taxation Administration Act 1953* and specifically to amend Part 5.1 of Chapter 5 to expand the list of exceptions under which the Commissioner of Taxation may disclose superannuation information.

ASFA supports the proposed legislative change as being in the interests of members of superannuation funds. We see this legislation as an essential piece of the infrastructure required for enabling and facilitating the consolidation of accounts as set out in the Government's Stronger Super proposals. The legislation will also assist with reuniting members of superannuation entities with superannuation amounts held for their benefit by the ATO under the provisions of a range of superannuation related acts.

We also note and support the inclusion in the list of entities entitled to receive the information those entities that provide administration services to superannuation funds etc. Their inclusion will enable those entities to directly receive the information rather than it having to be first passed to the trustee of the fund, scheme or RSA. We acknowledge that, although they will receive the data directly, the administrator will only be able to use the data in their capacity as the administrator of the fund, scheme or RSA.

Comments on the exposure draft legislation

On our reading, the legislation, as drafted, is sufficient to achieve the broad objectives for which it is designed.

Comments on the exposure draft explanatory memorandum

General Comments

As the primary purpose of the amendment is to enable the ATO to provide information it holds about a person to third parties, ASFA is concerned that privacy arrangements and specific fund rules have not been directly addressed by the explanatory memorandum.

A reader with limited understanding of the operation of privacy laws may consider that this law change will subject people to being unnecessarily inundated with requests to amalgamate their superannuation accounts, requests to change their primary fund and unsolicited marketing information.

So as to allay these fears, ASFA requests that consideration be given to including in the explanatory memorandum information about:

- the manner in which it is intended the information may be sought or provided;
- the purposes for which the information may be used; and
- the safeguards that do, or it is proposed will, exist to safeguard the information, restrict its use, and enable a person to restrict access to and use of their personal information

Additionally, as the formal disclosure processes are developed, ASFA sees a need for the ATO to collect additional information about an individuals benefits so as to provide information to recipients of the data as to whether there is a trust deed/legislative restriction on either transferring benefits to, or receiving benefits from another fund, or to restrict the provision of information to recipients at the request of the member. The inclusion in the explanatory memorandum of a statement indicating an intent to consult on this issue would provide comfort to both members and superannuation fund trustees that individual needs were to be considered in the development of data interchange processes.

Specific comments

General outline and financial impact

Disclosure of superannuation information

Compliance cost impact

We note that the compliance cost impact is stated to be low. Whilst this may be accurate in the context of the ATO merely being given the legal capacity to provide the information, ASFA is of the view that this assessment may prove inaccurate when consideration is given to the range of measures which will flow from this enabling legislation.

It is our view that ultimately this change will require more than just signing a new SuperMatch agreement with the ATO. Specifically, consideration needs to be given to the purpose of the change in the context of the Government's Stronger Super objectives. To deliver the expected outcome (as indicated by the purpose for which the information can be given) will require superannuation entities to amend their administration systems so as to:

- Provide more information to the ATO
- Receive more complete information from the ATO
- Interact electronically with other funds

- Undertake direct contact with members on specific account consolidation issues.

Each of these will require the development of both computer systems and supporting processing services and, in quantum, for some funds these costs will be considerable.

ASFA would like to see this part of the Explanatory Statement amended to note that while the direct compliance cost impact of this legislation is low, as enabling legislation it will lead to further changes which may result in significant compliance costs for a number of entities.

Chapter X Disclosure of information

Context of amendments

Paragraph 1.9

The current wording of this paragraph suggests that funds will have unrestricted access to superannuation data held by the ATO in relation to their members. This is not correct as, from 1 January 2012, such searches are only possible with member consent.

ASFA suggests that for clarity the following changes be made:

- In the first sentence the word 'limited' be followed by 'just'. This is necessary as the primary change to the ATO registers will be the uploading of MCS data which will significantly expand the content.
- In the second sentence the words 'Funds that have signed an agreement with the ATO' should be followed with 'and who have their members consent' to correctly reflect the basic requirement to be met before a fund may access this data.

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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 via e-mail to rhodge@superannuation.asn.au.

Yours sincerely
Margaret Stewart



General Manager, Policy and Industry Practice