

25 November 2011

The General Manager
Benefits and Regulation Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Attention: Ms. Erica Lejins & Mr. Nick Reid

Email: superamendments@treasury.gov.au

Dear Sir/Madam,

RE: Exposure Draft – Using Tax File Numbers as a Primary Locator and to Facilitate Account Consolidation

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector.

AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST has been an active participant in the Stronger Super consultation process, including as a member of the SuperStream Working Group. The Working Group has considered the use of Tax File Numbers (TFNs) for superannuation purposes.

In addition, AIST has made submissions on the legislation amending the SIS Act to allow the use of TFNs as a primary locator and to facilitate account consolidation, and on the electronic portability form for lost superannuation. It has also covered this subject matter in submissions to the Super System review, and in other representations to Government.

Key points

AIST supports appropriate regulatory mechanisms to facilitate the use of TFNs to allow their use as a primary locator and to facilitate account consolidation.

In summary, these mechanisms would be strengthened, and the policy intention of the Government would be better implemented by the adoption of the following changes to the proposed regulations:

- Explicitly stating the privacy safeguards to be provided; &
- Allowing the use of TFNs for between fund searches using ATO online superannuation facilities (such as Supermatch), based on either previous consent to the use of TFNs for superannuation purposes or alternatively .

Protecting member privacy

In the commentary on the Stronger Super consultation web page states that: *“The regulations safeguard member information and privacy by providing rules for member consent, and procedures that must be followed by superannuation fund trustees and retirement savings account providers when using an individual’s tax file number.”*

However, this information about privacy is mostly missing from both the Explanatory Commentary and the Exposure Draft.

Either the Exposure Draft or the Explanatory Commentary should explicitly tie the Regulations to the requirements of the Information Commissioner's TFN Guidelines 1992. These are currently under review, and in its submission to the Information Commissioner AIST recommended that the Guideline be correspondingly amended to reflect the (then) forthcoming changes to the use of TFNs for superannuation purposes.

Use of TFNs to search for superannuation accounts

The Explanatory Commentary states that safeguards are provided by restricting use of TFN's for locating and searching for superannuation accounts to situations where consent has been provided. This is specified in proposed Regulation 6.49(1).

Regulation 6.49(2) states that consent for locating intra-fund accounts is provided by having prior generic consent to the use of TFNs for superannuation purposes. While this is supported, it is noted that many superannuation fund members have given consent for the use of their TFN on a more limited and different basis.

Until recent years (and having regard to the Information Commissioner's TFN Guidelines 1992), it was commonplace for superannuation funds to ask for two separate consents in relation to use of a member’s TFN. One consent was sought in relation to use of the TFN by the fund, while the second

consent was sought regarding provision of the TFN to another fund if the benefits of the member were transferred to another superannuation fund.

Notwithstanding this, the public policy objective of the legislation, and the benefit to members outweighs other considerations, and Regulation 6.49(2) is supported on this basis.

On the same basis however, it is submitted that the Regulations could allow the use of TFNs to inter-fund search purposes using Supermatch (or similar ATO tool) in a way that would be consistent with provisions of s.299LA, including the Government's intentions of the legislation.

It is noted that the terms of Regulation 6.49(2) do not address inter-fund search purposes, and by implication the construction of the Regulation suggests that use of TFNs for inter-fund searches are not permitted under the sub-paragraph.

Rather than the regulations being silent of this matter, it is submitted that Regulation 6.49(2) be reworded as follows:

“(2) A trustee complies with paragraph (1) if the beneficiary has consented to the use of the tax file number for superannuation purposes, but such consent has not been given if the beneficiary has requested in writing that the tax file number not be disclosed for search or location purposes.”

In effect, this would allow prior consent to the use of TFNs for superannuation purposes to be the basis of consent for searching using TFNs, unless a member has objected to this. When read with Regulation 6.50, this would apply only to searches using an ATO online search facility.

This change would also give fund members the opportunity to opt-out of intra-fund location exercises if they so wished; an option that does not seem to exist in the current Exposure Draft for people who have provided their TFN to their fund.

In the alternate, but using the same basic approach, it is suggested that consent to inter-fund search purposes using Supermatch can be obtained by notifying members of a fund in advance of such a search, and giving them the opportunity to opt-out if they so wish. For example, such notification could be provided as information included in a member statement mailout.

AIST also supports the limitation in Regulation 6.50(1)(b) that any other inter-fund search using TFNs (ie, not using an ATO facility) can only be on the basis of “contacting an RSA provider or superannuation entity on the direction of the beneficiary in writing”.

It should also be made explicit that the Regulations allow the inclusion of Eligible Rollover Fund accounts in the universe of funds in an inter-fund search.

This is a formulation that draws upon the superannuation fund disclosure requirements of the Information Commissioner's TFN Guidelines (“Classes of lawful tax file number recipients”).

Additional provisions

AIST supports the remaining provisions in the Explanatory Draft

If you have any further questions regarding this submission, please contact Tom Garcia, Policy and Regulatory Manager on (03) 8677 3804 or tgarcia@aist.asn.au.

Yours sincerely

A handwritten signature in black ink that reads 'Fiona Reynolds'.

Fiona Reynolds

Chief Executive Officer