

18 February 2011

Ms Tessa Rees  
Contributions and Accumulation Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**BY EMAIL:** [strongersuper@treasury.gov.au](mailto:strongersuper@treasury.gov.au)

Dear Ms Rees

**Re: Exposure Draft – Tax Laws Amendment (2011 Measures No.2) Bill 2011**

The Financial Services Council (FSC) is pleased to provide you with a submission on the aforementioned Exposure Draft.

The Financial Services Council represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers and financial advisory networks. The Council has 128 members who are responsible for investing \$1.7 trillion on behalf of more than 11 million Australians.

The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.


The FSC welcomes the Government's delivery of the first element of the SuperStream package of reforms. Once completely implemented, SuperStream will provide extensive efficiency benefits to superannuation members, employers and funds.

This Exposure Draft represents an important start in the development of a framework which will enable identification and consolidation of accounts. It does not in itself deliver the framework however.

This submission outlines our support for the widened usage of Tax File Numbers (TFN) for superannuation purposes and areas in which further detail is sought.

If you have any questions about this submission, please contact me on 02 9299 3022.

Yours sincerely



**ANDREW BRAGG**  
Senior Policy Manager

## **FSC SUBMISSION – TAX LAWS AMENDMENT (2011 MEASURES NO. 1) BILL 2011: USE OF TFNS FOR SUPERANNUATION PURPOSES**

### Context

The Super System Review (Cooper Review) which reported to the government in June 2010, made a number of recommendations in its SuperStream chapter that Tax File Numbers (TFN) be used for identifying superannuation accounts and for account consolidation.

Subsequently, on 16 December 2010, the Government endorsed the Review's recommendations in respect of wider TFN usage in superannuation.

In particular, the FSC supports the following endorsed recommendations:

- 9.11 – (TFN as a unique identifier of superannuation accounts);
- 9.13 – (ATO development an electronic facility for all TFN-linked accounts);
- 9.14(a) – (Development of procedures for validating TFNs); and
- 9.15(d) – (Development of an inter-fund 'tick a box' consolidation framework).

The FSC welcomes the Government delivering its commitment that the TFN becomes a unique identifier and a mechanism for consolidation of accounts.

### Auto consolidation

The FSC does not support the Review's recommendation 9.12 which proposes that trustees could consolidate accounts without express consent from the member.

We do however welcome the Government's stated position reflected within the examples in the Explanatory Memorandum that consolidation of superannuation accounts must always be member-directed. Whether superannuation fund members wish to consolidate accounts between funds (inter-fund) or within a fund (intra-fund), it must be their choice.

On consumer protection grounds, the FSC would only support a consolidation mechanism which relies expressly on member consent and explicit direction.

The FSC believes that further consultation for developing a practical procedure for consolidation is critical.

We believe the process should take account of the need for members to receive sufficient support and information about their accounts to enable them to make an informed decision. Such decisions are likely to impact on insurance coverage or asset planning strategies.

### Exposure Draft

#### *Accompanying Regulations – Mechanism for exchanging information*

This Exposure Draft represents an important start in the development of a framework which will enable identification and consolidation of accounts. It does not in itself deliver the framework however.

The FSC understands that the Treasury is presently developing draft Regulations which will accompany this Exposure Draft Bill. These Regulations will provide the mechanism

by which a superannuation provider can obtain information on a member's holding in other superannuation funds.

We believe that it is imperative that these Regulations are released for public consultation with sufficient time for the industry to consider and agree how this legislation can be effectively implemented.

This Exposure Draft provides the capacity for trustees to consolidate superannuation accounts held by the same member within a fund (intra-fund). This instrument alone will not provide the capacity for inter-fund consolidation without additional detail in the expected Regulations.

Specifically, a repository of member information will be a critical enabler of the consolidation mechanism between funds (inter-fund). Without information exchange processes between superannuation providers, the goals of identification and consolidation can not be met.

The proposed SuperStream initiatives including common data standards will be critical to ensure the long term efficacy of these TFN reforms.

The ATO's lost members register and data held by the ATO via Member Contribution Statements (MCS) will not provide a comprehensive picture of a member's superannuation interests.

This is because MCS reporting requires funds to provide details relating to member contributions once a year. Therefore, only accounts that have received contributions are reported, and data may be up to 15 months old. Unless reporting requirements are changed, then accounts that have not received contributions will be omitted from the process, and can be out of date

To develop this repository of information, the government and the ATO should consider the nature of legislative amendments needed to enable the ATO to collect the relevant data, barriers under privacy law preventing TFN matching and any unintended consequences for the government to address.

It is therefore critical that the Government provides a repository of information (via the ATO) to enable the identification and consolidation initiatives contained in this Exposure Draft to ultimately be delivered.

Section 1.21 of the Explanatory Memorandum contemplates these Regulations. The FSC looks forward to reviewing such Regulations and assisting the Government to deliver a practical approach for fund members and the industry.

The framework and mechanisms which are to come will not provide the panacea to the lost members or multiple accounts issues immediately after commencement on 1 July 2011. Additional requirements will take time to implement, and time frames around changes to required reporting need to be considered when anticipating the results of these initiatives.

#### *The potential for unintended consequences*

The FSC recognises there are risks emanating from account consolidation as envisaged under the Exposure Draft which includes the likelihood of members experiencing increased volume of correspondence from funds.

The process by which a member authorises one fund to commence a consolidation process is envisaged as “tick a box”. The rights and obligations of an authorised fund versus other funds will be complex and critical. In contemplating this process, a number of risks appear evident.

More than one fund may be given this right over time as it may be sought by incumbent funds through campaigns, be included in standard application forms or be part of a change of employment process or a second employment arrangement.

Funds contacted by a “member-authorised fund” and asked to rollover a client’s balance currently have significant obligations to verify identity and consent, to minimise fraud. In any enhanced framework, the fund receiving the request needs to be certain that the member has indeed provided informed consent.

Fund to fund consolidation has the potential to be greatly simplified by other envisaged initiatives (e-commerce) and we believe it would be more reasonable to implement expanded consolidation provisions as part of these initiatives.

#### *Consistency of terminology*

The following terms are used interchangeably throughout the Exposure Draft:

- An RSA provider;
- Trustee of the eligible superannuation entity;
- Superannuation fund trustee; and
- Superannuation fund trustees and retirement savings accounts provider.

For consistency and clarity of purpose, the FSC would prefer a wider term be used in the legislative instrument. We therefore propose that 'superannuation fund trustees and retirement savings accounts providers' be used throughout the instrument.

We note that the Exposure Draft refers to the consolidation of “interests” in superannuation funds, while the Explanatory Memorandum refers to consolidation of “accounts”.

Careful consideration needs to be given to the use of the terms “interest” and “account”. Definitions of these concepts have implications for consolidation and general tax treatment of superannuation benefits.

To date we believe that these issues are unresolved, and we acknowledge that work has been and continues to be done to address this. Therefore, we request that any inclusion of these terms in the Exposure Draft Bill or the Explanatory Memorandum include consideration of the broader implications of the use of these concepts.

#### *Application*

As a number of trustees do not perform administrative services within the entity, the framework should logically be extended to administrators used by the trustee. However the FSC recognises that this may only be appropriate once the Government has implemented other relevant recommendations from the Review.

In its response to the Review recommendation 6.2, the Government stated that while it does not support APRA licensing of administrators or clearing houses, it does “support heightened requirements for trustees who deal with administrators and will refer the need for prudential standards in this area to APRA for consideration.”

The FSC acknowledges the Government wishes to strengthen the regulatory framework between trustees and administrators before allowing administrators to perform identification and consolidation. However, this may prevent trustees who use a different entity to provide their administrative services from utilising the proposed identification and consolidation process.

*Further amendments*

The *Tax Administration Act 1953* and the *Privacy Act 1988* should reflect the two proposed permitted uses of the TFN as contained in the Exposure Draft are built into those Acts as 'lawful' purposes.

Both Acts should be amended to permit the passing on of a member's TFN to a third party for identification and consolidation purposes. As proposed under 'application', this could include an administrator.

Privacy barriers are also located in Tax File Number Guidelines 1992 made under section 17 of the Privacy Act. Under the guidelines, TFNs are not to be used as a national identification system under any circumstance.