

2 June 2011

Stronger Super
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir / Madam

**Comments on issue paper-
SuperStream working group - Tax File Numbers and account consolidation**

Thank you for the opportunity to provide a comment on the proposed regulation development for the use of Tax file numbers (TFNs) in account consolidations by superannuation funds.

You will note that our submission refers you to our report published in September 2010 about issues with the Australia Tax Office's handling of cases where a person's TFN is compromised. Given the proposed broader use of TFNs, we highlight this to recommend that strong administrative practices should be built to address these issues and protect the public.

I would welcome the opportunity for my office to speak with you about this and the other reforms proposed under the Stronger Super reform package.

If you require any further information or wish to discuss this submission, please contact Margaret Chinnery, Director, on 02 6276 3705.

Yours sincerely



Allan Asher
Commonwealth Ombudsman

**Submission by the
Commonwealth Ombudsman**

**Comments on issue paper:
Stronger Super
SuperStream working group
Tax file numbers and account consolidation**

Consultation conducted
by The Treasury

INTRODUCTION

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- achieving improvement in policy, process and procedural practice arising from administrative deficiencies or systemic failure, as identified through independent review of complaints about Australian Government administrative actions
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints and/or remedies to injury arising from government administrative action
- developing policies and principles for accountability.

The Commonwealth Ombudsman, as established through the *Ombudsman Act 1976*, is also the Taxation Ombudsman. The Taxation Ombudsman focuses on investigating complaints from taxpayers and tax professionals about the administrative actions of the Australian Taxation Office (ATO).

BACKGROUND

The Ombudsman's *own motion* report - Australian Taxation Office, Resolving tax file number compromise¹, illustrates some of the problems that can arise with management of tax file numbers (TFNs).

The Commonwealth Ombudsman provided a submission (18 February 2011) in response to the exposure draft *Using tax file numbers as an identifier and to facilitate account consolidation* in which we referred to an increase over the previous two years in the number of complaints received relating to the compromise of taxpayers' tax file numbers (TFNs).

Complaints involving the compromise of TFNs are of particular concern as a TFN is used as the primary identifier in the administration of the taxation system. Any threat to the security and integrity of TFNs has implications for individual and business tax records, collection of tax revenues, disbursement of taxation payments, and the identity and privacy of individuals.

In this submission the Ombudsman commented that we would expect that the revised regulations will address the following requirements for trustees and other eligible superannuation entities:

1. Implement effective procedures and systems, including contact protocols with the ATO, to ensure:
 - the integrity of the identity matching process including establishment of an identity matching standard
 - safeguard against instances of TFN compromise through fraud, accidental disclosure or operator error.

¹ Report No.12: *Australian Taxation Office: Resolving Tax File Number Compromise*. September 2010. Commonwealth Ombudsman, Canberra.

2. Undertake effective communication with fund members, especially those of non-English speaking backgrounds, to explain the scope and purpose of the changes, and processes in place for the protection of their privacy and superannuation accounts.
3. Incorporate statements in their service charters about fund members' rights and obligations in the use of their TFNs in relation to their superannuation accounts, and assurance of the integrity of members' TFNs.
4. Institute appropriate mechanisms to respond to fund members' complaints or grievances in respect of a trustee's use of their TFNs. In particular, clarification of jurisdictional issues or process for complaints – initially to the Superannuation Fund or the ATO, with further recourse to the Commonwealth Ombudsman, Superannuation Complaints Tribunal or Australian Prudential Regulation Authority

It is with this expectation in mind that comments are provided on this issue paper.

COMMENTS ON PROPOSED STEPS

Step 1: Fund seeks consent to search - The fund (the first fund) obtains member consent to use the member's TFN to search for multiple accounts.

Although it is not discussed, the value and benefit achieved by the use of TFNs as an identifier are lost if the integrity of the matching process is not well established. Although the reference is to a search through the ATO SuperSeeker website, the integrity of the TFN match is not guaranteed.

If a TFN has not been correctly applied in the first instance, the consolidation process may be compromised if subsequent identification processes rely simply on the TFN alone. Accounts incorrectly consolidated and subsequently paid out to the wrong account holder will create needless anxiety for both the losing and gaining account holders.

Other basic identifiers used in a credible identity matching process (which may also establish a minimum standard for "degree of match") should also be provided.

The proposed model would require each member to give consent to the search however there are risks associated with the issue of fraud, TFN compromise and information being provided to the wrong party. Robust proof of identity processes will assist to ensure that the fund is dealing with the correct party. This should also include a policy regarding update of address and returned mail.

Where a TFN compromise has been detected by the fund, there would need to be a mechanism for escalation to the ATO as well as advice to the account holder/taxpayer.

Step 2: Fund undertakes search- What other information should the other funds be required to provide at this stage to the first fund?

As mentioned above, identity should not rely on the TFN alone. Other identifiers should be provided to ensure a match before other basic information, such as account balances, is disclosed.

Step 3: Fund advises the member of located accounts and the implications of consolidation

Full disclosure to the account holder prior to consolidation is an important step. The further concept of including all of the consolidation information on one form would appear to provide account holders with a better opportunity to understand the transaction. This option should

also include information for those from a non-English speaking background and reference to further advice options.

In the case of multiple consolidations, the account holder should always retain the right to choose a part consolidation.

There may also be value in allowing a "cooling off" period to allow account holders to address any unexpected (misunderstood) consequences prior to loss of insurance coverage benefit or the extent of exit fees.

Consolidation within a fund could be treated differently than that of 'external fund to fund consolidations' however, an important step would be to offer the account holder the opportunity to disagree with the consolidation (within a set timeframe) to allow them to seek formal advice.

Other issues

What safeguards are needed to ensure the security of TFNs exchanged between funds and to protect against identity theft?

As mentioned above:

- A robust identity matching process including the establishment of an identity matching standard which identifies a positive and negative match
- Proof of identity processes to safeguard against instances of TFN compromise through fraud and accidental disclosure
- An escalation system to the ATO where a TFN is identified as compromised which should also include advice to account holders which include instructions and who to contact, and
- Where a new TFN has been issued by the ATO, fund records would need to be updated to record the correct number and to avoid a future mismatch.

CONCLUSION

As previously mentioned, the Ombudsman's *own motion* report - Australian Taxation Office, Resolving tax file number compromise, illustrates some of the problems that can arise with management of TFNs.

The ATO has had many years of experience in managing the registration and usage of TFNs, yet still faces challenges in administering the processes. The potential benefits to the superannuation industry and their clients from the extended use of TFNs should be balanced with the need for strong governance policies, processes and procedures and an equally robust complaints mechanism.

Our office would welcome the opportunity to discuss our recommendations from the *own motion* report as they may relate to the circumstances proposed in the regulations development.