

28 June 2021

Director, Tax and Compliance Unit  
Retirement Income Policy Division  
Treasury  
1 Langton Cres  
PARKES ACT 2600

Via email: [superannuation@treasury.gov.au](mailto:superannuation@treasury.gov.au)

Dear Sir/Madam

## Improving the visibility of superannuation assets in family law proceedings

CPA Australia and Chartered Accountants Australia & New Zealand (the Major Accounting Bodies) welcome the opportunity to provide comments on the *Reducing red tape for superannuation funds – ECPI measures* consultation.

The Major Accounting Bodies represent over 200,000 professional accountants in Australia and New Zealand. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

The exposure draft legislation, *Treasury Laws Amendment (Measures for Consultation) Bill 2021: superannuation information for family law proceedings* (the 'Exposure Draft', the 'draft bill') forming part of this consultation will provide for family law proceedings to access superannuation records held by the Australian Taxation Office (ATO).

Presently, this information needs to be accessed via forms approved by the Principal Registrar of the Family Court of Australia – however, these can only be lodged with superannuation funds where it is known that a superannuation interest is held.

It is expected that the measures contained in the Exposure Draft will provide for much faster resolution of family law proceedings, with the benefit that, once approved by the Commissioner of Taxation, the ATO will provide the parties to Family Law proceedings with all details of superannuation interests held by the parties.

The Major Accounting Bodies welcome this measure which we expect will result in a reduction in the time it takes to complete family court proceedings. This will help to make the process more efficient and less costly. We expect for a small number of cases this proposed measure will lead to significantly less cost.

We note that superannuation information held by the ATO can suffer from latency issues. This is caused by the variety of different reporting regimes in place for different types of superannuation funds, as well as real-time data exchanges between funds, their administrators and the ATO, which captures reporting of raw data including errors and their corrections. We offer no substantive comments in respect of this issue, except to point out that with the addition of time-sensitive family law proceedings to the many end-users of the ATO's superannuation data, additional efforts to reduce this latency would be valuable.

Additionally, we point out that visibility by the ATO can be obscured in instances where a party to family law proceedings has not provided their superannuation fund with a Tax File Number (TFN). Whilst we acknowledge the right of superannuation fund members to withhold their TFN from their superannuation fund, we believe that this is a problem which is likely to affect only a very small number of cases, and will get smaller over time as funds are provided with TFNs through different channels such as employers or the transfer of benefits from other superannuation funds.

We also note that in a small minority of cases, there will be parties to family law proceedings who will continue to attempt to evade visibility through methods such as a string of rollovers between new fund interests. Although we believe that the measure proposed in the Exposure Draft will make such attempts more difficult, the forms presently in use, and which are approved by the Principal Registrar, will continue to serve a purpose for matters such as these, where new interests are created prior to visibility on ATO records. We support the continued availability of different methods of accessing superannuation information, if these different methods are required.

We consider that the measure may provide clarity regarding the future sharing – and potential division – of assets, including other financial products such as deposit accounts, shareholdings and other interests. Future technology, such as that likely to be considered for open banking and the consumer data right, could potentially be used to automate some of the tasks awaiting the parties either during, or at the conclusion of, family law proceedings. Already in existence is the data provided to the ATO under the Common Reporting Standard – a global regime under which banks and other financial institutions collect and report financial account information on foreign tax residents to the ATO.

Finally, we note that in some family law proceedings involving bankrupt spouses, creditors' rights can be adversely affected, due to the mixture of superannuation and non-superannuation assets. We ask that Treasury consider how the law could be amended to better protect the interests of creditors. We would be happy to talk to Treasury about this issue.

For further information in relation to our submission, please contact Tony Negline, Superannuation Leader at CA ANZ at [Tony.Negline@charteredaccountantsanz.com](mailto:Tony.Negline@charteredaccountantsanz.com) or Richard Webb, Policy Advisor Financial Planning and Superannuation at CPA Australia at [richard.webb@cpaaustralia.com.au](mailto:richard.webb@cpaaustralia.com.au).

Yours sincerely

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