

9 November 2012

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By Email: economics.sen@aph.gov.au

Dear Committee Chair

Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill

The Financial Services Council (FSC) welcomes this opportunity to make a submission in relation to the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012 (the Bill).

The FSC represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers and financial advisory networks. The FSC has 128 members who are responsible for investing \$1.8 trillion on behalf of more than 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Stock Exchange and is the fourth largest pool of managed funds in the world. 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.

If you have any questions regarding the FSC's submission, please do not hesitate to contact Blake Briggs at _____ or on _____.

Yours sincerely

BLAKE BRIGGS
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1. Overview

- 1.1 The Financial Services Council makes this submission in relation to 'Schedule 4 – Superannuation' of the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012 (the Bill).
- 1.2 The FSC supports reuniting members with their lost super accounts and has worked to achieve this outcome through the Stronger Super consultations. There were 3.6 million lost superannuation member accounts with a total value of \$17.1 billion reported to the ATO as at 31 December 2011.
- 1.3 The FSC is seeking to bring to the Committee's attention, however, a technical issue related to lost members who are uncontactable that may result in an unintended consequence for low income employees. This issue would also create additional administrative complexity for superannuation funds and the Australian Taxation Office (ATO).
- 1.4 The FSC also recommends that the Bill be amended to require the ATO to pay the lost super that it will hold into fund members' active accounts once the ATO has identified those accounts. At present the ATO will only transfer the monies into a member's account when a member has requested the ATO to do so.

2. Payment of lost member (uncontactable) accounts to the ATO

- 2.1 The terms under which lost member accounts are transferred to the ATO are provided in section 24B of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (the Act). Currently the Act provides that where the account is taken to be a 'lost member' account, and the balance is less than \$200, the balance is to be transferred to the ATO.
- 2.2 The definition of 'lost member' is provided for in Regulation 1.03A of the Superannuation Industry (Supervision) Regulations 1994 (the Regulations). There are two types of lost member accounts, those that are uncontactable (Regulation 1.03A(1)(a)) and those that are inactive (Regulation 1.03A(1)(b)). Note that these two categories are distinct from the 'inactive accounts of unidentifiable members' that are also regulated by section 24 of the Act.
- 2.3 The FSC is concerned about how the Bill interacts with the existing provisions for uncontactable accounts. In relation to uncontactable accounts, the Regulations provide that

Lost member

- (1) A member of a fund is taken to be a lost member at a particular time if:
 - (a) the member is uncontactable, that is, if and only if:
 - (i) the fund has never had an address for him or her; or

(ii) 2 written communications or, if the trustee so chooses, 1 written communication have been sent by the fund to the member's last known address and returned unclaimed;

- 2.4 It may be the case that an active account that is receiving compulsory employer contributions can be deemed a lost member (uncontactable) account. This would occur where a fund member moves house without notifying the fund, or the fund member provides an incorrect postal address, or no postal address, when joining the fund, but remains employed and entitled to mandatory employer contributions.
- 2.5 It is clear that under the current arrangements an account can be deemed a lost member (uncontactable) account within months of it being opened. However, the current \$200 threshold prevents these accounts from being required to be paid to the ATO as most accounts would receive sufficient contributions to push the balance over \$200 within the timeframe.
- 2.6 The Bill, however, proposes lifting the threshold to \$2000. A higher threshold makes it much more likely that such lost member (uncontactable) accounts fail to reach the threshold before the twice annual reporting to the ATO, resulting in the legislation requiring the money to be paid to the ATO.
- 2.7 Effectively, this measure would mean that such a balance is required to be paid to the ATO as the account is 'lost' (uncontactable). This would occur even though the account remains active and receiving contributions.
- 2.8 Further, as the fund member continues to receive employer contributions, a new account will then be opened for this member upon the receipt of the next contribution, and after the previous balance was paid to the ATO. The member then has two accounts, one with the ATO and one with the fund, which the member or ATO would later have to attempt to manually consolidate into the active account.
- 2.9 That this outcome could result within months of the first contribution being made makes it more likely there would be a significant number of sub-\$2000 accounts in existence that meet these criteria. Furthermore, this outcome could affect employees with incomes of \$45 000 pa or less (as their employer contributions would not exceed \$2000 over six months, not including fees or possible negative investment returns).
- 2.10 The FSC recommends that the Regulations be amended to provide that an account can only be deemed a lost member (uncontactable) account if the member has been a member of the fund for at least two years. The outcome could be achieved by amending the Regulations accordingly

Lost Member

(1) A member of a fund is taken to be a lost member at a particular time if:

- (a) the member is uncontactable, that is, if and only if **the fund has not received a contribution or rollover in respect of a member within the last 2 full years of his or her membership of the fund and**
 - (i) the fund has never had an address for him or her; or
 - (ii) 2 written communications or, if the trustee so chooses, 1 written communication have been sent by the fund to the member's last known address and returned unclaimed;

2.11 This amendment is not without precedent. It is currently the case that the other limb of the lost member test, lost member (inactive) accounts, are only deemed 'lost' after the fund member has been a member for longer than two years.

2.12 Furthermore, this amendment would provide sufficient time for a fund to verify whether the fund member's address is correct as per Regulation 1.03A(1)(d) of the Regulation, through their employer or other identification information.

2.13 This amendment would continue to result in accounts that are deemed lost member (uncontactable) accounts and have balances of between \$200 and \$2000 being required to be paid to the ATO provided the fund member has been a member for over two years. This cohort would likely include the overwhelming majority of existing lost member (uncountable) accounts.

2.14 However the amendment would avoid the unintended consequence of prospective and recently opened accounts being required to be paid to the ATO simply because the fund member has moved house or not provided a correct address.

3. Reuniting lost super with members

3.1 The FSC is also concerned that the Bill does not require the ATO to proactively consolidate the 'lost' accounts that it will receive, and hold in consolidated revenue, into active accounts held by a superannuation fund once the ATO has successfully identified the member.

3.2 At present, the Act only requires the monies to be paid into a superannuation account when the member requests the ATO Commissioner to do so:

(2) The Commissioner must pay the unclaimed money:

- (a) to a single fund if:
 - (i) the person has not died; and
 - (ii) the person directs the Commissioner to pay to the fund; and
 - (iii) the fund is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*);

3.3 This holds true for all forms of lost super, including lost (uncontactable), lost (inactive) and lost (unidentifiable) accounts.

- 3.4 However, in the Mid-Year Economic Financial Outlook statement of 22 October 2012 the Government announced that it would be open to additional ways to reunite members with their lost super

The ATO will use its data matching resources to match these lost accounts with members and assist those members to be reunited with their lost superannuation. The Government will consult further on additional ways to facilitate this process of reuniting members with their lost accounts.

Individuals can reclaim superannuation accounts transferred to the ATO at any time...

- 3.5 In this context the FSC recommends that the Bill be should be amended so that, once the ATO has identified an active account of a member for whom the ATO holds a lost account, the Commissioner be required to pay the monies into the active account held by a superannuation fund as soon as practicable and no longer than six months after the active account being discovered.
- 3.6 A proactive approach would be appropriate due to the nature of the account holders of lost accounts. Often the account has become 'lost' because the fund member is disengaged. This disengagement would also cause the fund member not to contact the ATO to request that their lost account be consolidated with their active account.
- 3.7 However, if the ATO were to proactively consolidate a lost account into an active account held by a superannuation fund, the member would benefit from the higher aggregate returns they would receive on the 'lost' monies when compared to the CPI rate of interest paid to the member when held by the ATO.
- 3.8 The FSC is of the view that the ATO's 'Super Match' portal, being developed for SuperStream and funded by the industry, should enable the ATO to effectively reunite a member with their lost super.