ABN 82 080 744 163

15 January 2006

Mr Peter Hallahan
Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hallahan

Inquiry into the provisions of the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and five related bills

IFSA appreciates the opportunity to contribute to the Senate Committee's Inquiry into the Tax Laws Amendment (Simplified Superannuation) Bill 2006 and five related bills.

IFSA is a national not-for-profit organisation which represents the retail and wholesale funds management, superannuation and life insurance industries. IFSA has over 120 members who are responsible for investing over $920 billion on behalf of more than nine million Australians. Members' compliance with IFSA Standards and Guidance Notes ensures the promotion of industry best practice.

We welcome this package of legislation. The measures contained in this package will significantly simplify the current complex tax arrangements and restrictions that apply to superannuation benefits. They represent a significant step forward in improving public understanding of the superannuation system and providing greater incentives to save for retirement.

We appreciate the way the Government and Treasury have consulted with industry to date in the lead up to the implementation of these changes, particularly given the very short time frames involved. We also appreciate the consideration that has been given to the issues raised by IFSA since the proposals were announced on 9 May 2006. We are pleased to see that many of our concerns have been addressed in the legislation. Treasury’s efforts to engage with industry are to be commended, especially given the time constraints.

In making this submission, IFSA has focused on three key aspects of the package which we believe should be addressed in the legislation. These are:

1. Implementation issues associated with the non-quoting of TFN proposals;
2. Crystallisation of pre-’83 components for closed products; and
3. Timeframes available for the payment of excess contributions tax.

Given the scope of the package, the magnitude of the law and the tight timeframe between announcement and commencement of the measures, it is inevitable that some issues of a technical nature will arise. We intend to raise these issues directly with Treasury as soon as possible with a view to having them addressed in the consequential amendments Bill. We have not attempted to address such issues in this submission.

Finally, IFSA would welcome the opportunity to appear at any hearings or to provide further information in support of this submission. Should you have any queries in relation to this submission, please contact myself or Stephanie Lee on 02 9299 3022.

Yours sincerely

Richard Gilbert
Chief Executive Officer

SUBMISSION TO THE SENATE ECONOMICS COMMITTEE: TAX LAWS AMENDMENT (SIMPLIFIED SUPERANNUATION) BILL 2006

The following issues have been identified by IFSA as requiring further consideration and in cases amendment to the Bill as suggested.

1. Non-quotation of Tax File Numbers (TFNs)

Bill reference: Subdivision 295-I "No-TFN contributions income", Income Tax Assessment Act 1997

IFSA supports measures designed to increase the members' population of tax file numbers within superannuation funds in order to ensure the integrity of the new contribution caps and to improve procedures for locating lost members. However, there are some significant implementation aspects affecting both funds and fund members that naturally arise with the introduction of such historic change where the timeframe is, necessarily, short (from finalisation of law to commencement).

The most significant issues identified by our members include:

- Insufficient time for the ATO, employers and industry to plan and run **effective** awareness campaigns that would reach members (and overcome initial inertia) by 1 July 2007;
- Difficulties in rejecting personal (and spouse) contributions particularly where they are paid via BPay, clearing houses, employers and independent payroll houses;
- The requirement to apply the penalty tax on employer-type contributions where a member has failed to quote their TFN by the end of the relevant financial year, but nevertheless provides it before the fund lodges its tax return; and
- Complex calculation and crediting requirements for refunds of TFN tax and particularly difficult requirements related to interest on refunded TFN tax where an employer failed to properly pass on the TFN.

IFSA believes that we can work with the Government, Treasury and the ATO to devise solutions that mitigate the initial impacts and that do not pose significant long term risks to the integrity of these measures. In this regard, there are a number of possible options that may be considered on either a standalone or combined basis.

In our submission to Treasury of 10 August 2006 in response to *A Plan to Simplify and Streamline Superannuation* we noted our interest in working with the Government to ensure the strategies for TFN collection are as effective and efficient as possible. In that submission, we called for a delay of one year in the commencement of these measures.

IFSA continues to strongly believe that a delay is warranted to enable the establishment of a robust regime for the collection of TFNs.

We have considered various options for dealing with the more significant issues and these should be considered in conjunction with a delay. For example, where a member has not quoted a TFN but personal (or spouse contributions) are made, funds should be able to refund (rather than reject them outright) within a specified time. This, at least in the initial phase and for existing members, would allow funds a further opportunity to engage with the member to obtain the TFN (particularly from longstanding members). Similarly, we believe that funds should not be required to collect “no-TFN” tax if a member provides their TFN after the end of a financial year but before the fund is liable to pay the tax.

We would be pleased to expand on, or modify as appropriate, some of these options to arrive at a practical outcome.

2. Crystallising pre-’83 components – issues for closed superannuation products

Bill reference: Section 288-185, “Superannuation provider to calculate crystallised pre-July 83 amount of superannuation interest by 30 June 2008”, Taxation Administration Act 1953

One of the measures contained in the Bill will require superannuation funds to determine the value of the pre-’83 component of everyone’s superannuation benefit as at 30 June 2007. This value will need to be crystallised as part of the new tax-exempt component by 30 June 2008.

Simplifying the taxable components of superannuation benefits from eight down to two is welcome. However, identifying the pre-July 1983 component and establishing the exempt and non-exempt components for closed superannuation products raises a number of system and cost issues. This is primarily because the information required to perform these calculations is either paper based or held on imaging systems and will need to be retrieved and calculated manually. As such a number of superannuation providers only calculate the components upon enquiry or benefit payment.

IFSA proposes that closed superannuation funds (closed as of 1 July 2006) be given the flexibility to crystallise the pre-’83 component at a later point in time, when a certain event is triggered (but still using the value as at 30 June 2007). For example, when the member exits the fund or enquires as to the breakdown of the tax components. Currently, closed superannuation funds calculate (many on a manual basis) the relevant components when such events are triggered. Closed superannuation funds would like to retain the status quo. We do not believe that this will compromise the intent of the legislation.

If this flexibility cannot be given indefinitely, then IFSA proposes that closed superannuation funds be given a 3 year window (until 30 June 2011) to crystallise the pre-'83 component for superannuation balances.

3. Timeframes for the payment of excess contributions tax

Bill reference: Subdivision 292-G "Collection and recovery", Income Tax Assessment Act 1997

In the current drafting of the Bill, excess contributions tax is payable 21 days after the ATO has issued a notice of assessment to a member under section 292-385. A general interest charge is payable if these amounts remain unpaid after this period of time under section 292-390. As superannuation funds are required to pay the amount to the member or directly to the ATO within 30 days of receiving the release authority (depending on the member's instructions), a timing difference exists. This could mean members are subject to penalty for not remitting the tax on time due to a misunderstanding of the timeframe available to the fund as opposed to the timeframe in which they are liable to remit the tax. This issue is particularly important with regard to the payment of tax on excess non-concessional contributions where there is a mandatory requirement to withdraw the amount from the fund.

IFSA suggests that this issue could be overcome by extending the tax payment period from 21 days to around 50 – 60 days (approximately the sum of the member and the fund's payment periods). The member would be given a maximum of 21 days (or ideally 30 days) in which to ensure they lodge the release authority with the fund. The fund would continue to be given 30 days in which to release the amount to the member or ATO. The general interest charge would only be imposed upon the member if they had failed to ensure the fund had received the release authority within the specified (21/30) day timeframe.

For consistency, the timeframe for the remittance of excess contributions tax in relation to concessional contributions would also need to be extended from 21 days to the combined period determined for non-concessional contributions i.e. between 50-60 days. It is not mandatory for the member to withdraw the excess concessional tax penalty and under current provisions they can elect to submit the release authority to a fund within 90 days. However, for simplicity and consistency it may be appropriate to limit the release period to 60 days.