Investment &
Financial
Services
Association Limited
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3 March 2010

Mr John Hawkins
Committee Secretary
Department of the Senate
Parliament of Australia
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Mr Hawkins,

Tax Laws Amendment (2010 Measures No. 1) Bill 2010

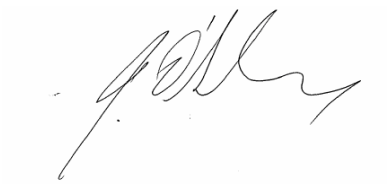
The Investment & Financial Services Association (IFSA) is pleased to provide a submission to the Senate Standing Committee on Economics inquiry into this Bill.

IFSA is the peak body representing Australia's retail and wholesale funds management, superannuation and life insurance industries. IFSA has over 135 members who are responsible for investing over $1 trillion on behalf of more than ten million Australians.

To put the scale of our industry in perspective, our funds under management are larger than the GDP of Australia and the capitalisation of the Australian Stock Exchange. In international terms, Australia has the fourth largest pool of managed funds in the world.

If you wish to discuss this matter further, please contact me or Andrew Bragg on 02 9299 3022.

Yours Sincerely



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Background

IFSA welcomes the Government's initiative to deliver its election promise by legislating for a free clearing house service for small business. We support the creation of approved clearing houses for the management of superannuation contributions on behalf of small business.

We believe the manner in which Medicare have been formulating their approach will advance the development and uptake of the much-needed improvements in electronic payments in the industry.

In order to give effect to the Government's commitment to provide a free clearing house service for small businesses, the Tax Laws Amendment (2010 Measures No. 1) Bill 2010 was introduced in the House of Representatives on 10 February 2010.

This Bill follows an Exposure Draft which was released by Treasury for comment during November 2009. IFSA resolved not to provide Treasury with a submission on the Exposure Draft due to the lack of technical detail outlined in the draft. Instead we have focused our attention and resources on the two working groups established by Medicare.

Medicare

The Medicare Working Group meetings have been positive, constructive and have demonstrated that Medicare has:

- Proven to be responsive to industry needs in building the systems required to facilitate contribution acceptance and processing;
- Been aware of the industry's proprietary interests; and
- Proposed a model which is consistent with IFSA's long term policy objectives in superannuation efficiency and technology (embraces electronic commerce and creates a path for the longer term adoption of uniform data standards).

We note however that Medicare has a tight timeframe for implementing the Government's commitment – the clearing house service must be operational by July 2010. IFSA submits that there should be a degree of administrative flexibility with this date as the systems required to facilitate this project must be built during the interceding period. This is a significant and complex undertaking and should not be rushed. It would therefore be desirable for Medicare to embark on system stress testing prior to the start of the clearing house service.

IFSA remains hopeful that the systems being developed by Medicare will prove both easy to use for employers and will link with ease with IFSA member superannuation funds.

The technology solution introduced by Medicare should ensure an efficient facilitation of payment throughout its lifecycle (i.e. from source to final destination), including the ability for fund providers to electronically allocate contributions to member accounts.

IFSA has identified areas of concern that are outside the scope of the Medicare Working Groups which have are not been adequately addressed in the Bill as drafted. We therefore draw the Committee's attention to the following concerns.

Accountability

The cause of much of the "red-tape" and cost incurred by employers is the inaccurate supply of member data needed to facilitate efficient matching and investment in the intended superannuation fund.

Most contributions flow through to the fund trustee as expected, primarily due to the accurate supply of data. Where insufficient or inaccurate data is provided at the start of the process, the problem is picked up at the conclusion when the fund trustee attempts to allocate the contribution. Where this occurs, contributions must be "reversed" through the clearing house to the employer and subsequently to the employee to confirm the details of their account. Medicare will encounter this same issue as experienced by all prior and existing participants in the remittance of employer contributions.

The timing of the deduction and remittance of contributions and their subsequent investment in a superannuation fund carries value for the employee.

Clear accountability is required in order to satisfy any disputes when they arise. The framework supporting this accountability should be mandated and made clear to all participants.

The ultimate responsibility resides with the employee to provide their employer with accurate information on their superannuation account. If this basic test is not satisfied, where the employer has met their obligations, the employee should be held responsible for the contribution not being invested in the superannuation fund in a timely manner.

Similarly, Medicare will be responsible for any delay incurred between the supply of accurate payment and data by the employer and its forwarding to the fund provider.

Medicare should make this accountability framework clear on their website, detailing the need, implications and relative responsibilities for ensuring accurate information is provided. Expected timeframes for cycle times of contacting employers and employees to update or correct exceptions should also be outlined. Similar messages could also be included in any direct communication with impacted employees/members.

Equity and competition

IFSA notes that in Item 3 of the Bill, the amendment to the *Superannuation Guarantee (Administration) Act 1992* provides that payments made to the approved clearing house meet the conditions for superannuation guarantee payment obligations. Employers will meet their obligation once a payment to the approved clearing house within the required time for a superannuation guarantee contribution has occurred.

This is in contrast to the current obligation, which requires that the contribution be received by the trustee of the recipient superannuation fund in order for the employer to have discharged their obligations.

IFSA believes that this provision should be extended to all clearing houses to ensure consistency and equity in the market. There are many clearing houses that already exist in the superannuation system, operated by financial institutions. These services run efficiently and are cost effective to employers at volume.

IFSA's discussions with Medicare indicate that Medicare does not intend to compete with these providers, but sees its role as providing services to small employers who do not have access to these private clearing houses. This aligns with the view that IFSA has maintained of the Government's clearing house service.

If the Item 3 amendment is passed as drafted, we would be concerned about the erosion of the "level playing field" in the provision of clearing house services. IFSA has long maintained that competition is the key to an efficient and cost effective superannuation system, and that competition occur on a level playing field.

The proposed change to the *Superannuation Guarantee (Administration) Act* will lead to a situation where superannuation contributions made through the approved clearing house (Medicare) are considered completed in terms of the employer obligations, while contributions made through any other clearing house are not considered completed from the employer's part until they are received by the trustee of the fund to which those contributions are sent.

To address this matter of equity, IFSA recommends that the *Tax Law Amendment (2010 Measures No. 1) Bill 2010,* Schedule 1, be amended such that all references to "the" approved clearing house be changed to "an" approved clearing house. Further, that the definition of "an approved clearing house", which will be finalised in the forthcoming Regulations, be expanded to include a range of licensed clearing houses in the industry.

Recommendation 1: Amend Schedule 1 references to "an" approved clearing house, rather than "the" approved clearing house.

Recommendation 2: Specify in forthcoming Regulations approved clearing houses.

Licensing

If the recommendation above is adopted, it would be vital for these services to be regulated, as they would effectively be accepting superannuation contributions on behalf of the trustee.

There are currently no licensing arrangements for clearing houses, and this is appropriate, as they are only managing payment arrangements for employers.

Therefore, IFSA recommends that an "approved clearing house", should only be established by a holder of an Australian Financial Services License (AFSL) that includes the provision of superannuation products and services, and is a Registrable Superannuation Entity (RSE).

This requirement provides both consumer protection, and prudential oversight of these services.

Recommendation 3: Only licensed and registered clearing houses should be eligible to become “approved clearing houses”.

Summary

IFSA believes that, with our suggested amendments, the Government’s clearing house service will deliver on its objectives.

We believe the service will function without disruption to the industry and provide a modern clearing facility for small employers, which is consistent with the long-term technology and efficiency needs of the superannuation industry.