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24 February 2010

Financial Services Working Group  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [financialservices@treasury.gov.au](mailto:financialservices@treasury.gov.au)

Dear Sir

**Product Disclosure Statement (PDS) for superannuation and managed investment product disclosure.**

The Taxation Institute of Australia (**Taxation Institute**) is pleased to provide its comments on the draft regulations and an example Product Disclosure Statement (**PDS**) for superannuation and managed investment product disclosure which was released for public comment on 21 December 2009.

The Taxation Institute is concerned about the incorporation of the information contained in the [www.superinfo.gov.au](http://www.superinfo.gov.au) website by reference. Without seeing the content (the site is not available yet) it is impossible to comment on the content.

The tax information from the simplified PDS is too simplified and should contain more information.

The following, amongst other things, should be covered in the PDS:

- the tax treatment if a pension is withdrawn;
- the tax on excess contributions as these are severe penalties and members need to be put on alert;
- the TFN information is largely irrelevant as most supply their TFN;
- there is no mention of the CGT discount that superfunds obtain, franking credits or the fact that CGT is the primary code; and
- there should be a statement that tax advice should be obtained from a recognised tax professional such as a lawyer or accountant who is registered under the Tax Agent Services Act.

The Taxation Institute would like clarification around the requirements for a PDS for a self managed superannuation fund (**SMSF**). There is still inconsistency across the industry about how PDSs are used in the SMSF environment (for example, the prescribed fee template).

Standard information about superannuation and how superannuation should be taxed should be available from a Government website and the PDS should not be used as an education tool for general information about superannuation. The PDS should contain be product specific information.

The new PDS requirements rely too heavily upon incorporation by reference (**IBR**) to provide for important information to be disclosed. For example, insurance exclusions and death benefit arrangements are not required to appear in the PDS. The assumption is that such information will appear in another document/website via IBR. This kind of information is too important for members/prospective members to not appear in the PDS itself and it should not be assumed that members will go to a website or other document to locate this information if it is not included in the PDS.

Further, trustees may be liable for misleading/deceptive conduct or breach of trustee duties if IBR information is not actually given to a new member upon joining a superannuation fund (ie where the members are effectively required to go further afield to obtain or look up the IBR information). Accordingly, to avoid potential liability for trustees, the likely outcome is that the trustees will provide the additional information to members in the form of a booklet (in addition to the 6 page PDS) or in the application forms. As a result, the legislative objective of shortening the PDS fails.

One solution to this would be to make express provision in the legislation for members to be taken to have viewed all information that is IBR in a PDS regardless of whether the member has in fact bothered to locate that additional information (ie a trustee would be taken to have provided this information to a member and the member could not claim that they have been misled because the trustee failed to provide such information). From a practical perspective, however, it may be preferable to ensure that all important information is disclosed upfront to members.

The Taxation Institute does not agree with the proposition that there should be no supplementary PDSs. To produce a whole new PDS to change one small point does not seem practical. This proposition may be based on the assumption that the PDS will be wholly electronic - but this is unlikely to be the case as many providers will maintain paper versions as well.

The Taxation Institute suggests that a better solution might be that members wishing to acquire a choice or SMSF product (using the new Cooper architecture) must obtain advice from a licensed adviser. The other members could be provided with a plain vanilla PDS (that presumably could fit all important information into 6 or so pages).

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Should you have any queries with respect to any of the matters raised above, please do not hesitate to contact David Williams on (02) 9958 5332 or the Taxation Institute's Tax Counsel, Angie Ananda on 02 8223 0011.

Yours faithfully



David Williams  
President