MEMORANDUM OF UNDERSTANDING

BETWEEN

AUSTRALIAN TAXATION OFFICE
AND
AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

FOR THE PROVISION OF
Mutual Assistance and Exchange of Information

TAX OFFICE MOU
Reference No. 13.010
MEMORANDUM OF UNDERSTANDING BETWEEN THE AUSTRALIAN TAXATION OFFICE (ABN 51 824 753 556) AND THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (ABN 79 635 582 658).

This Memorandum of Understanding is between:

a) the Australian Prudential Regulation Authority, and

b) the Commissioner of Taxation.

1. BACKGROUND AND PURPOSE

1.1 This Memorandum of Understanding (MOU) sets out a framework for co-operation between the Australian Prudential Regulation Authority (APRA) and the Australian Taxation Office (ATO) (the Agencies) to facilitate coordination between the Agencies in relation to superannuation matters, including the exchange of unclassified, publicly available, protectively marked\(^1\) or protected information\(^2\). Co-operation and exchange of information between APRA and the ATO is described in the two administrative arrangements attached to the MOU. Matters other than superannuation are to be dealt with, on a case by case basis. Areas of relevance to superannuation may be dealt with under this MOU, where there is legislative provision for the exchange of information. The purpose of this MOU is to establish a streamlined process that enables the Agencies to assist each other when necessary.

2. STATUS

2.1 This MOU is not intended to create legally binding rights or obligations.

2.2 This MOU replaces the previous MOU made between the ATO and APRA on 1 September 2010. The formal review of this document is scheduled for October 2016 incorporating agreed changes reached between both parties before the date of renewal. Updates to organisational and functional changes within both agencies can be discussed and agreed on an informal basis without the need for a formal renewal of this Agreement concerning exchange of information and co-operation.

3. INFORMATION SHARING

3.1 Subject to legislative and operational considerations, the Agencies agree that information available to one Agency which is relevant to the responsibilities of the other Agency may be shared, in a timely manner, regardless of whether a request has been made by the other Agency.

4. PROTECTION OF INFORMATION GENERALLY

4.1 Where information is passed between the Agencies, the Agencies will endeavour to ensure that their officers, employees, agents and subcontractors:

(a) use all information, including unclassified, publicly available, protectively marked or protected information\(^3\) shared between them only for the purposes for which it was provided;

\(^1\) Information may be marked with a protective marking such as a Dissemination Limiting Marker (e.g., for information previously classified as IN-CONFIDENCE a Dissemination Limiting Marker such as ‘Sensitive’ is used, as detailed in the Protective Security Policy Framework).

\(^2\) APRA Act 1998 defines protected information. See Appendix B of this MOU for more detail. The Taxation Administration Act 1953 also defines protected information. See Appendix A of this MOU for more detail.
(b) comply with any conditions that the providing Agency imposes in relation to the use and
disclosure of the protectively marked or protected information;

(c) The Agencies understand that they will use their best endeavours to preserve the
confidentiality of the information received under this MOU. In this regard, staff members
of the Authorities will hold confidential all information obtained in the course of their
duties. Any confidential information received from either of the Authorities is to be used
exclusively for lawful supervisory purposes and in compliance with any conditions
imposed on the use of the information;

• An Agency may disclose information received from the other Agency under this MOU to a
third party in the following circumstances:

• where the Agency is legally compelled to do so, for example to a Court or Royal
Commission;

• where the Agency receives a legally enforceable demand, for example under Freedom of
Information laws; and,

• in other circumstances permitted by law.

(d) When an Agency is legally compelled to disclose information provided under this MOU to
a third party, the Agency which is under compulsion is expected to promptly notify the
other Agency, indicating what information it is compelled to disclose and the
circumstances surrounding its release. The Agencies expect each other to use their best
endeavours to preserve the confidentiality of the information to the extent permitted by
law, if requested to do so.

(e) Where an Agency wishes to disclose information received under this MOU to a third party,
but is not compelled to do so, the Agency is expected to notify the other Agency to obtain
its consent. It will not disclose the information if consent is refused. Where consent is
obtained, the Agency disclosing the information will impose on the third party any
conditions which have been made by the other Agency concerning the use of that
information. In any event, as far as possible, the party disclosing the information will
impose a condition on the third party that it keep the information confidential, and that it
will not further disclose the information without first obtaining consent.

(f) The Agencies recognise that the provision of information may be denied on some
grounds, including national security or when disclosure would interfere with an ongoing
investigation. Where a request for information is denied, the Agency that made the
request expects that it will be provided with the reasons for not providing the information.
Each Agency may impose conditions on the use of information provided to the other
Agency.

(g) The Agencies expect each other to mark all documents received under this MOU:
"Confidential - Received under Memorandum of Understanding between APRA and the
ATO" (noting that this additional marking will not alter handling requirements specified in
the Protective Security Policy Framework for protectively marked information); and

(h) take all reasonable measures to ensure that protectively marked or protected information
provided by the other Agency in their possession or control is protected against loss and
unauthorised access, use, modification or disclosure.

5. CONSULTATION AND LIAISON

5.1 Subject to operational considerations, the Agencies will endeavour to support the administration
and management of relevant consultative committees (such as multi agency consultative
committees) and assist each other as required in the development and implementation of new
measures which affect both Agencies.
5.2 The Agencies will endeavour to consult each other on proposed policy statements, technical documents, legislative modifications, publications, circulars and press releases which have an impact on, or may be of relevance to either Agency.

5.3 It is envisaged that liaison in respect of operational matters will occur on a regular basis informally and via planned liaison meetings where required. Senior agency representatives may meet to discuss strategic issues. Operational matters may be managed via liaison between the respective agency gatekeepers and some matters may be referred to technical forums or liaison meetings.

6. REFERRAL OF MATTERS

6.1 The Agencies understand that, with regard to a matter which more appropriately falls within the jurisdiction of the other Agency, the objectives of each Agency will be enhanced if, after consultation, the matter is formally referred and continued by that other Agency.

7. TRAINING

7.1. The Agencies are committed to the development and provision of training to enhance the skills of their staff. Subject to operational considerations, the Agencies will endeavour to assist each other with training where appropriate. Any requests for assistance with training should initially be made through the Contact Officer.

8. COSTS

8.1. Generally, costs associated with information sharing under this MOU or an Administrative Arrangement are met by the Agency providing the information. Where it appears that substantial costs may be incurred in responding to a request for information, the Agencies may agree a cost sharing arrangement in relation to the provision of that information.

8.2. For specific information provided under 4.7a of Administrative Arrangement 1, the ATO will provide to APRA funding of $230,000.00 per year for four years (as shown in the table below) commencing in 2013-14 to allow for the upfront build with provision for an option to extend for an additional year subject to SuperStream funding review outcomes. The payments are provided for the provision of data for four years from 2014-15 to 2017-18 with provision for extension of an additional year if funding allows.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Initial Term</th>
<th>Option Term</th>
<th>Services Delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013/14</td>
<td>$230,000</td>
<td></td>
<td>Initial build and pre-payment for 2014/15 data provision</td>
</tr>
<tr>
<td>2014/15</td>
<td>$230,000</td>
<td></td>
<td>Pre-payment for 2015/16 data provision</td>
</tr>
<tr>
<td>2015/16</td>
<td>$230,000</td>
<td></td>
<td>Pre-payment for 2016/17 data provision</td>
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<tr>
<td>2016/17</td>
<td>$230,000</td>
<td></td>
<td>Pre-payment for 2017/18 data provision</td>
</tr>
<tr>
<td>2017/18</td>
<td>$230,000</td>
<td></td>
<td>Pre-payment for 2018/19 data provision (if option term is exercised)</td>
</tr>
</tbody>
</table>

Sub Totals $920,000 $230,000 payments are exclusive of GST (GST not applicable)

8.3. To facilitate this arrangement APRA will issue an invoice to the ATO at the beginning of each financial year for $230,000.
8.4. Where costs or charges between the agencies are contemplated, there may be a requirement in some circumstances for GST to apply. Where GST is payable the following guidelines are of assistance: Goods and Services Tax:

In this clause Payments are amounts payable for the supply of goods, services or other things under this MOU (other than by this clause) that are not expressly described as being GST inclusive.

- All Payments are taken to be exclusive of GST.
- If GST is imposed on a supply made under this MOU, the recipient must pay the supplier – in addition to the Payment for that supply, and at the time of making that Payment:
  o an amount calculated by multiplying that Payment by the prevailing applicable GST rate under the GST law, provided that
  o if the Payment to the supplier is a reimbursement or indemnification calculated by reference to a loss, cost or expense it has incurred, the Payment will first be reduced by the amount of the input tax credit to which the supplier is entitled for that loss, cost or expense.

- Each party must provide to the other relevant party all information reasonably required:
  o to determine if GST is imposed on a supply made under this MOU, and if so
  o to enable tax invoices to be issued,

and must immediately notify the other of any changes affecting the accuracy of any information previously provided by it.

Note – GST is generally imposed on supplies made for consideration. However, certain payments made by one government related entity to another are not taken to be the provision of consideration – see section 9-17 of the A New Tax System (Goods and Services Tax) Act 1999.

9. REVIEW

9.1 The operation of the MOU should be reviewed annually to ensure that it meets current operational requirements. The contents of the MOU should be formally reviewed every three years and if necessary, the MOU may be amended.

Signed for the Australian Taxation Office by

[Signature]
Alison Lendon
Deputy Commissioner of Taxation
Date: 3.12.2013.

Signed for the Australian Prudential Regulation Authority by

[Signature]
Helen Rowell
Member
Date: 3/12/13