

BUSINESS
TAX OFFICE MOU
REFERENCE NO. 13.010

**MEMORANDUM OF
UNDERSTANDING –
HEAD AGREEMENT**

**AUGUST 2020
TO
DECEMBER 2022**



Australian Government
Australian Taxation Office



APRA

MEMORANDUM OF UNDERSTANDING

BETWEEN

**AUSTRALIAN TAXATION OFFICE
AND**

**AUSTRALIAN PRUDENTIAL
REGULATION AUTHORITY**

**FOR THE PROVISION OF
Mutual Assistance and Exchange of Information**

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 including in his capacity as Registrar of the Australian Business Register.

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 and related matters,
- 1.2 Further detail in relation to co-operation and exchange of information between the Agencies is described in the two Administrative Arrangements attached to this MOU. To the extent that there is a conflict between the provisions of this MOU and any Administrative Arrangement, the provisions of this MOU prevail. 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 December 2016. The formal renewal of this MOU is scheduled for December 2022 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 MOU.

3 REVIEW

- 3.1 The Agencies' Contact Officers are to monitor and evaluate the operation and progress of this MOU. As soon as practicable after each anniversary of this MOU, each agency is to complete a joint entity review evaluating the MOU's operation and progress which includes a statement confirming each agency's compliance with its terms. The review will be endorsed by each agency's Contact Officers with a copy of the endorsed version provided to each agency's Manager.

4 TERMINATION

- 4.1 This MOU continues in operation until December 2022, unless terminated earlier by the agencies at any time by mutual agreement.

5 INFORMATION SHARING AND DATA RESPONSIBILITIES

- 5.1 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 exchanged, in a timely manner, regardless of whether a request has been made by the other Agency.
- 5.2 The data held by either Agency relating to its clients and other third persons (its data) may not be accurate, up-to-date, complete or error-free. However, each Agency is responsible for:
 - acting in accordance with, and meeting obligations imposed on it by, this Arrangement and the law,
 - amending its data within a reasonable time of it being formally notified by a person of changes to their details or of any inaccuracy, omission, defect or error in that data

relating to them where this is deemed appropriate by the Agency and subject to any other applicable legislative requirements,

- taking reasonable measures to ensure its data is free from malicious computer codes, and
- testing data it receives from the other Agency to ensure that data is free from malicious computer codes.

5.3 Information destruction can occur under the Agency's records authority requirements.

6 DATA INTEGRITY, CONFIDENTIALITY AND PROTECTION

6.1 Each Agency will – in relation to the data provided to it by the other Agency under this Arrangement:

- comply with any Commonwealth policy relevant to information including:
 - The Protective Security Policy Framework, and
 - The Information Security Manual,
- notify the other Agency as soon as practicable of any possible error or defect in that data,
- take all reasonable measures to maintain the confidentiality of that data, and ensure that data is only used for the purposes for which that data was provided and is only accessed by persons who have the required security vetting and a legitimate 'need-to-know' to perform their duties,
- ensure that data is transferred over agreed secured transfer channels,
- ensure that data is protected by such security safeguards, as are reasonable in the circumstances, against loss, destruction, or unauthorised access, modification, disclosure, recording or use to meet Protective Security Policy Framework and Information Security Manual standards,
- ensure that data is not transferred, or allowed to be accessed by persons, outside Australia without the other Agency's prior approval (unless otherwise permitted under this Arrangement or an existing overseas data exchange related agreement),
- work together to come to an agreement on how that data is managed/handled by the other Agency,
- in the event that a breach has been identified as being an Eligible Breach under the Notifiable Data Breach Scheme (as per *Part IIIC of the Privacy Act 1988*), ensure that all affected parties and individuals are notified, and appropriate mitigating actions taken.
- comply with all responsibilities under the Privacy Act 1988 and Privacy (Australian Government Agencies Governance) APP Code 2017
- ensure data is fit for purpose (i.e. of sufficient quality to be suitable for its intended use)

7 PROTECTION OF INFORMATION

7.1 Where information is exchanged, the Agencies will endeavour to ensure that their officers, employees, agents and subcontractors:

- use all information shared between them only for the purposes for which it was provided;
- comply with any conditions that the providing Agency imposes in relation to the use and disclosure of the protectively marked or protected information; and
- 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.

7.2 The Agencies will use their best endeavours to preserve the confidentiality of the information exchanged under this MOU. Any confidential information received from either of the Agencies is to be used exclusively for lawful purposes and in compliance with any conditions imposed on the use of the information;

7.3 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.

- 7.4 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.
- 7.5 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.
- 7.6 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.

8 CONSULTATION AND LIAISON

- 8.1 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.
- 8.2 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.
- 8.3 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.

9 REFERRAL OF MATTERS

- 9.1 The Agencies understand that some issues may involve questions which fall within the jurisdiction of both Agencies. Before referring a matter to the other Agency, the Agency which raises the issue will endeavour to provide a draft response to its part of the issue and provide it to the other Agency.
- 9.2 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.

10 TRAINING

- 10.1 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.

11 COSTS

- 11.1 Generally, costs associated with information sharing under this MOU or an Administrative Arrangement will be 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 to a cost sharing arrangement in relation to the provision of that information.

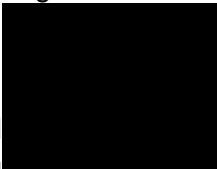
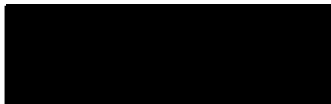
Note – GST is generally imposed on supplies made for consideration. However, certain payments made by one government related entity to another are not taken to be the provision of consideration – see section 9-17 of the *A New Tax System (Goods and Services Tax) Act 1999*.

12 DISPUTE RESOLUTION

- 12.1 The parties must attempt to resolve any dispute concerning this MOU by negotiations at an operational level. However, if those negotiations fail to resolve that dispute:
- either party may give the other a notice setting out specific details of that dispute, and reporting the failure of negotiations to resolve it, and
 - if that dispute is not resolved through negotiation between the MOU Managers, that dispute is to be referred upward, through the parties' equivalent management levels, until resolved.
- 12.2 Each party will bear its own costs in complying with this clause and will, to the extent possible, continue to perform its obligations under this MOU pending resolution of the dispute.

13 VARIATION

- 13.1 Either agency may propose a
- variation
 - extension for a specified period
- of this MOU by giving the other a notice setting out details of the proposal.
Unless otherwise indicated, this MOU can only be varied by agreement of the parties in writing.

<p>Signed for the Australian Taxation Office by</p>  <p>John Ford Deputy Commissioner Super and Employer Obligations</p> <p>Date: 31 July 2020</p>	<p>Signed for the Australian Prudential Regulation Authority by</p>  <p>Helen Rowell Deputy Chair</p> <p>Date: 31 July 2020</p>
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