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Wendy Hau
Director, Superannuation Access and Compliance Unit
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: paydaysuper@treasury.gov.au

Dear Wendy

Submission in relation to the “Securing Australians’ Superannuation” package

SW Accountants & Advisors Pty Ltd (SW) welcomes the opportunity to make a submission to the Treasury in relation to the Federal Government’s proposed “Securing Australians’ Superannuation” package (**Package**).

In this submission, we have provided you with a brief background of SW’s business and clients, and comments in relation to specified consultation questions. SW is an independent professional services firm in Australia with over 40 partners and 300 staff nationally. SW provides a wide range of accounting, business advisory, corporate finance and audit services to range of clients included small and medium enterprises, multinational companies and institutions. In particular, we have experience managing and conducting large scale superannuation remediation programs, giving us unique insight into what the ATO seeks to achieve with its compliance, assessment and reconciliation process.

SW is also a member of the SW International Network and Praxity Alliance, a global network and global alliance of independent professional services firms. This positions SW to provide professional services to both domestic and international clients engaging and carrying on business in Australia.

We hope also to be able to continue to provide our insights through any further consultation processes.

Yours sincerely



Paul Hum
Director
SW Accountants & Advisors Pty Ltd

Brisbane
Level 15
240 Queen Street
Brisbane QLD 4000
T + 61 7 3085 0888

Melbourne
Level 10
530 Collins Street
Melbourne VIC 3000
T + 61 3 8635 1800

Perth
Level 18
197 St Georges Terrace
Perth WA 6000
T + 61 8 6184 5980

Sydney
Level 7, Aurora Place
88 Phillip Street
Sydney NSW 2000
T + 61 2 8059 6800



1. General comments on the Package

At SW, we recognise that a strong superannuation system is crucial to ensuring a dignified retirement for Australian workers. SW agrees with the intended purposes of the Package to:

- ensure employers and employees have greater visibility over whether contributions have been paid correctly
- provide additional compounding returns for employees and
- increase the likelihood of recovery of unpaid super guarantee (SG) contributions.

The Package represents fundamental change in the way that superannuation obligations will need to be dealt with by employers and software providers. We strongly support additional consultation.

In its current form, there are several key areas of the Package that must be addressed to ensure there is no undue administrative and compliance burden on employers in complying with the payday super frameworks.

There are three main areas we believe would benefit from further consultation and change from the proposed design:

1. Due Date timing - We strongly support the Payday model where the employers obligation is fulfilled once the employer makes a payment. Nonetheless, the due date for superannuation contributions being made should be brought into alignment with current PAYG withholding timeframes.
2. Transition from self-assessment - We also support a more pro-active compliance program from the ATO which increases the chance of employer compliance and recovery of unpaid superannuation. However, this program should continue to be one that is risk based and retain its foundation of self-assessment.
3. Deemed employees – At present, there is no distinct design proposal for deemed employees. There should be a dedicated set of provisions dealing with superannuation obligations for deemed employees whose payments are not processed through payroll (e.g. where a contract is principally for labour).

We have set out our commentary and recommendations in more detail covering not only our three focus areas below.

4. Submissions to consultation questions

4.1. Payday Model v Due Date Model

Consultation questions

3. *Are there any advantages or disadvantages with the requirements of payday super being fulfilled if employers make the payment of SG contributions on 'payday' (i.e. the employer payment model)?*
4. *Are there any advantages or disadvantages with the requirements of payday super being fulfilled if the employee's superannuation fund has received employer contributions a certain number of days after payday (i.e. the due date model)?*
7. *How would intermediaries continue to be incentivised to expedite the processing of employer contributions under an employment payment model?*

We refer to the above consultation questions and make the following submissions.

Payday or due date model

We endorse a modification that absolves employers of liabilities arising from factors beyond their control. This adjustment ensures that once payments are made, employers are not penalised for any mistakes or hold-ups originating from clearing houses or superannuation funds.

While endorsing this modification, we advocate for the inclusion of further stipulations, such as the successful transmission of Single Touch Payroll (STP) data to the Australian Taxation Office (ATO), along with SuperStream Alternative File Format (SAFF) files to clearing houses or superannuation funds. It goes without saying that the STP and Member Account Transaction Service (MATS) reporting systems will require updates to encompass the timing of payment receipts and lodgements, thereby facilitating accurate assessment of compliance deadlines.

While this is a more equitable outcome for employers, there remains a risk of excessive delays or shortfalls in superannuation contributions due to clearing houses if they do not face penalties for such lapses. We propose legislative measures that impose sanctions on intermediaries or superannuation funds responsible for undue postponements or misallocation of funds.

Due date for contributions

Treasury's current focus has been on the timeframes within which clearing houses process and disburse superannuation payments. Our recommendation is to also consider the period necessary for employers to conduct superannuation processes and authorise payments to the clearing houses.

Typically, superannuation processing does not commence until the completion and closure of a pay run. The generation of the SAFF file is a distinct process followed by its submission to the clearing house. After finalising the payment amount—customary for most businesses—the procedure for payment authorisation and processing ensues, usually incorporating several layers of review and approval as part of internal risk management protocols.

Currently, uploading SAFF files to the clearing house is fraught with error and it is common for files to be rejected multiples times or for significant amendments to be necessary for uploading to be successful.

In addition, over recent years, employers have been increasingly concerned about superannuation compliance and many have included additional compliance processes to ensure that superannuation obligations are fulfilled. These range from reconciliations or review of SAFF files to complete recalculations of superannuation obligations outside of their payroll systems to ensure that any errors are identified prior to the current quarterly due dates.

Employers currently have at least 2 weeks and up to three and a half months for these processes so reducing this to less than a day (taking into account superannuation processes start after a pay run is finalised) may be unrealistic.

We recommend that additional time is provided to employers to conduct their validation and review over the superannuation processes and the SAFF file as well as payment approval processes before superannuation payments are due post 'Payday'. Given the existing framework for PAYG withholding payments, it would be prudent to adapt a similar model, assuming the issues related to SAFF file submissions can be adequately addressed.

An investigation into the current challenges with SAFF file submissions should be conducted, with findings reflected in the determination of superannuation payment deadlines. Noteworthy issues that impede timely SAFF submissions, as experienced by our clients, include:

- Incorrect superannuation fund details provided by new employees
- Failure of existing employees to notify employers when switching funds
- Superannuation fund mergers
- Changes in employee personal details which differ to fund details
- Inadvertent employee set up errors

- Negative superannuation contribution amounts
- Superable payments outside the STP framework or not processed through the payroll system (i.e. deemed employees)

We do note that Treasury has considered “catch up” or “grace periods” for employers further in the consultation package. However, we advocate for a system in which employers are able to perform fundamental processes and meet due dates without relying on “catch ups” or “grace periods”.

Deemed Employees

Payments to contractors can also be subject to superannuation guarantee obligations such as those made under arrangements that are “principally for labour”. These payments are typically not processed in the payroll system, nor are they subject to STP reporting requirements. Determining whether payments under a contractor arrangement should be superannuable can be complex and time consuming as well.

Contractors are typically paid following the submission of a valid tax invoice in accordance with the agreed payment terms, with the process managed through the accounts payable process (akin to other suppliers). Calculating the appropriate superannuation contribution for contractors often involves a manual process.

When superannuation is paid to contractors, it usually requires manual amendments to the SAFF or the manual entry of superannuation payments into the payroll system.

We propose that contractors be exempt from the payday superannuation changes or be allowed a modified monthly due date within the payday model. Moreover, employers should be exempt from reporting superannuable payments via STP. In place of this, an annual declaration could serve as a more efficient alternative.

The rationale for this exemption includes:

- The increased administrative workload of reporting data to the ATO for assessment and reconciliation imposes an undue burden on employers due to the manual nature of these processes.
- As contractor payments are managed via accounts payable, the payment dates do not always coincide with regular pay cycles. Requiring ad hoc pay runs to synchronise contractor superannuation payments with accounts payable dates would introduce unnecessary administrative complexities.
- The involvement of multiple internal departments and processes means that mirroring the system used for traditional employees is impractical.

4.2. Transition from self-assessment system to ATO-driven recalculations and assessments

Consultation questions

13. *What is the appropriate timeframe for ATO reconciliations? For example, fortnightly or monthly? Should the timeframe differ depending on the frequency of payday or would a standard timeframe be more appropriate?*
14. *Should there be a mechanism whereby employers can pay SG charge they know they have accrued, prior to the reconciliations and assessments being issued? How should this occur?*

We refer to the above consultation questions and make the following submissions.

The Australian taxation framework has been constructed on a self-assessment system, where taxpayers’ declarations are accepted at face value to determine the tax payable. These submissions are selectively reviewed by the ATO. This system has achieved a balance between administrative efficiency and effective tax collection.

The administration of the Superannuation Guarantee (SG) legislation currently aligns with this principle, with employers reporting and remitting superannuation contributions and the ATO conducting reviews on an as-needed

basis. The proposed design signifies a departure from self-assessment, moving towards a model where the ATO scrutinises each transaction and issues assessments for any variances.

We fully support a more transparent superannuation guarantee system and more pro-active ATO compliance actions provided this can be balanced with the administrative and compliance burden (and is practically feasible).

As specialists in data analytics and superannuation, we have conducted superannuation compliance reviews for employers across multiple industries and varying employer sizes.

In this work, we frequently encounter false discrepancies where initial recalculations suggest errors that later prove unfounded due to factors not recorded in payroll data in a structured format (i.e. it cannot be modelled).

There are a number of circumstances which can give rise to this, including:

- Manual intervention – As payroll relies on human input from employees and payroll staff, and systems cannot always cope with the variety of circumstances, there are often circumstances where payments and paycodes must be overridden.
- Misconfigured STP/Paycodes - Incorrect setup in payroll systems can create the illusion of superannuation underpayment.
- STP reporting issues - STP reporting not aligning with the payroll system calculations
- Retrospective adjustments and offsetting

Under the proposed design rules, each employer with one these circumstances receives a nudge, then assessments for each employee during a reconciliation period. Given these are false discrepancies, depending on the cost, many employers will object to the assessments issued.

At the end of June 2023, there were 56,252 businesses employing between 20 and 199 employees and 4,357 businesses employing 200 or more employees. For illustration, if 25% of those businesses have false discrepancies leading to incorrect assessments, and they all object, that would be equal to 89% of the SG cases finalised by the ATO in the FY22 year.

As it is currently unknown what proportion of employers have these circumstances, it is possible the ATO may lose control over its caseload, which will be determined by the frequency of erroneous assessments and the proportion of businesses that lodge objections. For instance, should every business receive an inaccurate assessment and choose to contest it, the ATO would be compelled to review and resolve each case. We certainly see this more often than not.

Needless to say, other than cost, this has the potential to cause significant delays in finalising cases and divert ATO resources from pursuing true underpayments of superannuation.

Comprehensive reviews by an external consultant range from 2 weeks for the smallest employers and most straightforward superannuation recalculations to 18 months for the largest Australian employers. These reviews are intensive, requiring expertise and the collaboration of payroll, finance and/or HR departments, along with full access to payroll system configurations. Should the volume of disputes mirror the aforementioned example, it could result in significant resource expenditure for businesses, potentially leading some to accept incorrect assessments based on cost-benefit analyses.

This scenario underscores the concern of addressing erroneous assessments alone.

We advocate for the retention of a risk-based self-assessment approach, wherein the ATO strategically allocates its compliance efforts—be it through assessments, reconciliations, or investigations—focusing on employers with a higher likelihood of superannuation underpayment. The utilisation of 'nudges' can be expanded, complemented by the introduction of employer 'scorecards'. This would allow those not currently under audit to self-examine and rectify discrepancies, thereby enhancing the integrity of reported data and overall compliance.

Furthermore, it is critical for the Treasury to consider the ease of access to data utilised by the ATO for employers and tax agents. Such transparency would facilitate proactive measures independently of ATO intervention and streamline the process for employers to address and rectify any issues arising from ATO-initiated interactions such as nudges, assessments, reconciliations, or investigations. We also recommend that the ATO expand STP reporting to cater separately for SGC certain exclusions (e.g. under 18s, foreign executives, certificates of coverage).

Timeframe for reconciliations

Given the intricate and time-intensive nature of superannuation obligation reviews, we suggest that the ATO allows for extended intervals between reconciliations. This would afford employers sufficient time to address and, crucially, rectify any systemic or process issues without being overwhelmed by a successive series of reconciliations. A quarterly cycle is proposed as the most practical duration.

Alternatively, it may be prudent to vary the reconciliation frequency in accordance with business size, reflecting the correlation between scale and complexity:

- For small businesses, a one-month reconciliation period could be appropriate.
- Medium-sized businesses might benefit from bi-monthly reconciliations.
- Large enterprises could continue with quarterly reconciliations, aligning with the recommended overarching period.

Mechanism to pay SG charge

A mechanism whereby employers can pay SG charge they know has accrued without an assessment or reconciliation being issued should be allowed. This allows employers to reduce the cost of interest by settling SG Charge at an earlier point without needing to wait for the ATO to issue assessments.

Similar to the current process, employers could complete a voluntary disclosure outlining details of the shortfall, calculated interest and administrative fees and proceed with the payment concurrently with this disclosure.

This is particularly important for SG underpayments that cannot be uncovered by ATO assessments and reconciliations.

For example, where time worked on a public holiday is inadvertently classified as overtime by an employers time and attendance system as it is paid at the same rate as overtime would come through in the STP data as overtime pay. An ATO recalculation and assessment would treat the payment as non-superable resulting in the shortfall being missed.

Employers should be able to make disclosure and pay the SG Charge without waiting for the ATO to make an assessment.

4.3. ATO flexibility in SG charge calculation and remission

Consultation questions

24. *Given that the current SG charge is not tax deductible, are there any circumstances where a non-compliant employer should be able to make a tax deduction for the SG charge paid?*
27. *Would granting the ATO flexibility to remit the SG charge in certain circumstances on the part of the employer risk the integrity of the SG charge?*
28. *If you consider that the ATO should have some discretion to remit the charge, under what discrete circumstances should this be able to occur?*

29. *Should any discretion to remit the SG charge apply to the entire amount due or only to certain components? For example, scope could be given to the ATO to remit the nominal interest and administrative components of the SG charge but not the SG shortfall.*

We refer to the above consultation questions and make the following submissions.

We support the proposal to allow the charge to be tax deductible and for the nominal interest and administrative components to be remitted in circumstances which are outside of the control of the employee and significantly affect the ability of the employer to comply with SG requirements. When considering whether nominal interest should be remitted, the ATO should need to have regard to the time period that has passed (i.e. whether the employee is significantly out of pocket).

These circumstances could include:

- Natural disasters or emergencies
- Absence of payroll staff due to unforeseen circumstances
- Payroll systems or ATO systems down

We would also advocate for the ATO to have the discretion to make the charge tax deductible and for administration fees to be remitted where the employer can be shown to have taken reasonable care in complying with their SG obligations.

4.4. Corrections and errors when paying SG

Consultation questions

31. *Should employers be allowed to make 'catch-up' contributions due to errors?*
32. *What would be a reasonable time period to allow employers to make 'catch up' contributions that aligns with the intent to pay superannuation alongside wages? Should this time period differ depending on payday frequency?*
33. *Under a 'due date' model, would it be appropriate for a period of grace to apply after the due date for SG contributions? If so, should the grace period apply automatically? Or should it be applied at the ATO's discretion in certain limited circumstances?*

We refer to the above consultation questions and make the following submissions.

As mentioned in the Package, inadvertent errors can be made by employers, or employees which can result in superannuation shortfalls occurring.

We advocate for a grace period that allows employers to rectify these shortfalls and make catch-up contributions without incurring the SG Charge. This grace period must be carefully balanced to maintain the integrity of the SG framework, ensuring that employees are not substantially disadvantaged, and employers are not excessively penalised. The Package considers a grace period from the discovery of an issue as well as a grace period starting from the due date (a fixed date period).

Initiating a grace period from the moment a shortfall is identified could potentially disadvantage employees. Take, for instance, a systemic shortfall that has persisted for six years due to a payroll system paycode being misconfigured. If the employer addresses the error within a grace period post-discovery, the employee would have suffered a financial loss over that duration. In such scenarios, we suggest the SG Charge should still apply, with

consideration given by the ATO to permit income tax deductibility and waiver of administrative fees (as mentioned above).

A fixed date period does not have the same issues associated with it and allows employers to rectify errors which commonly occur promptly after superannuation is initially processed. A fixed timeframe for corrections would enable the ATO to readily verify compliance, as it would be founded on clear, accessible, and quantifiable data. However, there is a risk that employers may disregard the actual due date and instead align with the catch-up or grace period due date. This can be mitigated by mandating the lodgement of STP information and a SAFF file, as well as ensuring a significant proportion of superannuation payments are made punctually (e.g. at least 90%).

We recommend a one-month period for employers to facilitate catch-up payments. Such a framework ensures timely superannuation contributions (or the application of the SG Charge) while providing sufficient time for employers to correct inadvertent errors. This timeframe does not unduly disadvantage employees, particularly if employers are incentivised to enhance compliance and accuracy.

5. Conclusion

In conclusion, while the initiative to bolster the superannuation guarantee framework is commendable, it is crucial to find a balance that promotes compliance without imposing undue administrative burdens on employers. The adoption of a Payday model with due dates aligned with PAYG withholding timeframes would offer consistency and ease for employers. Maintaining a risk-based, self-assessment system will ensure that the ATO can efficiently allocate compliance resources without being overwhelmed by the obligation to review every transaction.

For deemed employees, a tailored set of provisions that recognises the unique nature of their contracting arrangements is essential. This would prevent unnecessary complications arising from the application of general payroll-based rules to non-payroll scenarios.

The superannuation guarantee system's efficiency hinges on its ability to adapt to the complexities of the modern workforce while safeguarding employees' entitlements. The goal should be a system that is robust, equitable, and user-friendly, ensuring both compliance by employers and the financial security of employees in their retirement. Further consultation and refinement of the proposed design, taking into account the practicalities faced by businesses of various sizes and industries, will be key to achieving this balance.