

Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018

February 2018

Introduction

The Institute of Public Accountants (IPA) welcomes the opportunity to offer our submission on ‘Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018 ’.

The IPA is one of the three professional accounting bodies in Australia, representing more than 35,000 members and students throughout Australia and internationally. The IPA prides itself, in not only representing the interests of accountants, but also small business and their advisors.

The IPA’s submission has been prepared with the assistance of Deakin University through its SME Research Partnership and its dedicated IPA-Deakin SME Research Centre

We look forward to discussing further and in more detail the IPA’s recommendations with the Government and Treasury. Please address all further enquires to Tony Greco +61 3 8665 3100

Yours sincerely



Tony Greco

## General Manager Technical Policy

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IPA Submission

The Manager

Retirement Income Policy Division

The Treasury

Langton Crescent

PARKES ACT 2600

Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018

Dear Sir/Madam

The Institute of Public Accountants (IPA) welcomes the opportunity to make a submission on Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018. For the purposes of this submission, the exposure draft bill and explanatory memorandum will be referred to as Superannuation Guarantee Integrity Package. The Institute has members that work with business clients that can be affected by the provisions of the proposed changes to the law.

**Superannuation Guarantee Integrity Package**

It is imperative at the outset to note that the Institute supports the underlying intent of the legislation given the importance of ensuring that all employees are paid the superannuation they are owed by employers. Superannuation is a key part of a person’s retirement strategy and the failure of some employers to ensure these critical payments are made means employees retirement plans suffer. Improving superannuation guarantee compliance by employers is therefore important. It should also be noted, however, that not all small business owners who fail to pay superannuation obligations for employees do so with intention to break any laws. History has shown that many small businesses will have cash flow problems from time to time, and being unable to meet superannuation obligations in circumstances where cash flow is limited or non-existent, may not be an intentional breach of the law, but more a matter of survival in ensuring that the business remains a going concern. This situation is further exacerbated by the added difficulty of small business owners in accessing finance both in the short-term and long-term – a phenomenon well documented in the literature (OECD, 2017)[[1]](#footnote-1). The IPA recommends that the capacity of any enterprise under financial distress to pay employee salaries and superannuation entitlements needs to be considered when regulators seek to take enforcement action in individual cases.

We are of the view that the current deficiencies in the reporting of superannuation contribute significantly to the overall level of non-compliance. Single touch payroll will make it much easier to monitor and identify employers who fail to make their superannuation obligations, rather than the current regime of self-reporting. The existing onerous penalty regime has done little to address the problem and we remain less than optimistic that the additional penalties contained as part Superannuation Guarantee Integrity Package will address the problem until adequate real time reporting is introduced.

Comments on specific proposals contained in the Superannuation Guarantee Integrity Package appear below.

**Existing Superannuation Guarantee Charge Penalties**

It is important to note that there are already punitive measures in place to ensure employers meet their superannuation guarantee obligations. The proposed superannuation guarantee integrity measures contained in this Bill do not amend the existing deterrents. Before we add further deterrents, a holistic overview of how the existing and proposed measures work together is recommended.

In 2015, the Government introduced a Bill before Parliament (Treasury Legislation Amendment (Repeal Day 2015) Bill 2015) which attempted to remove needless red tape around superannuation guarantee obligations, which particularly impacted small businesses. Schedule 1 of this Bill proposed to simplify the superannuation guarantee charge and make the SG charge and penalty more proportionate to the non-compliance. It proposed to simplify the SG charge by aligning the earnings base for calculating the SG charge (currently salary or wages) with the earnings base for calculating SG contributions (ordinary time earnings). It also proposed to align the interest component on any SG shortfall with the period over which the contributions are actually outstanding. In addition, the proposed changes tried to remove the additional penalties under the *Superannuation Guarantee (Administration) Act 1992*, which can be significant and align them with administrative penalties under the *Taxation Administration Act 1953*.

The Bill acknowledged that the SG charge regime imposes punitive costs on employers who pay their SG contributions late or in part. This can have a significant impact on small businesses. If an employer does not make the correct amount of SG contributions on time they will have an SG shortfall on which SG charge is imposed. SG shortfall consists of the total of the employer’s individual SG shortfalls for each employee, nominal interest component and administration component for the quarter.

The requirement for employers to calculate SG contributions and SG charge on different bases increases compliance complexity for employers. Also, if an employer pays SG contributions late the requirement to calculate SG charge based on salary or wages can result in an SG shortfall higher than the minimum required contribution amount. ‘Salary or wages’ as defined in the SGAA describes a broader scope of remuneration than ‘ordinary time earnings’. For example, salary or wages includes overtime while ordinary time earnings does not. This means that if an employer pays SG contributions late then they could be liable to pay an SG shortfall amount higher than the original amount of contribution required to be made.

Late payment of SG contributions also attracts nominal interest on the shortfall amount from the beginning of the relevant quarter until the employer lodges an SG statement or the Commissioner makes a default assessment. This means if an employer pays SG contributions late but does not lodge an SG statement, then nominal interest accrues indefinitely until an assessment is made.

If the employer does not lodge an SG statement (or fails to give information to the Commissioner) they are also liable to pay the additional SG charge penalty at a rate of up to 200 per cent of the SG charge payable by the employer.

The harshness of the penalty regime can lead to further non-compliance delays in employers making superannuation contributions. The existing onerous penalty regime has done little to address the problem of unpaid superannuation. To add further insult to the cumbersome penalty regime, any late super contributions are denied income tax deductibility following a late payment. The Board of Tax report to the Government Review of Tax Impediments Facing Small Business, also concluded that the non-deductibility of the SG charge is unreasonable.

As stated earlier, removal of unnecessary red tape to make it easier for employers to comply when they are late in paying superannuation obligations is needed especially in light of the additional deterrents being proposed. We do not object to harsh options against recalcitrant employers but to put all employers through the same process is unfair.

**Commissioner’s ability to issue directions to employers**

The Institute supports the provisions providing the Commissioner with the power to issue directions to employers relating to the payment of employee superannuation obligations. We also support the undertaking of education courses in cases where the Commissioner is satisfied the employer has failed to either comply with an obligation or failure to pay superannuation to an employee or employees. Any exercise of this power must be accompanied by an understanding of the circumstances of the employer and the business, including as assessment of whether the employer has a reasonable understanding of the obligations required for the payment of employee superannuation (discussed further below).

**Educational directions**

The Superannuation Guarantee Integrity Package provides for the Commissioner to direct an employer to undertake an educational course where the Commissioner believes the employer lacks appropriate knowledge regarding compliance obligations. This is appropriate given that small business owners may not always understand the complexity and the practical application of the relevant laws[[2]](#footnote-2). It is noted that this ‘direction’ power requires the Commissioner to ensure that any education direction must be reasonable based on the employer’s circumstances. The Institute observes that small business owners will need a more generous timeframe because they often fulfil multiple roles within their business.

**Directions to pay the superannuation guarantee**

The Institute supports the need for the Commissioner to have these powers, provided the final legislation continues to provide for discretion of the length of time an employer is given to pay any outstanding amount. This is critical given that small businesses deemed to be in breach of the law may not have financial resources to pay any amount owed within a short timeframe. Any enforcement action should only be taken once the Commissioner has provided a small business sufficient time to pay what is owed to employees.

**Disclosing details of non-payment of superannuation**

The current law prohibits the provision of protected information to current or former employees of a business that has failed to comply with provisions of the superannuation legislation. This is to ensure that tax information remains confidential. We understand that the proposed revisions to the law will now allow an officer of the ATO to make a record of or disclose information (usually deemed confidential) to current or former employees that have not been paid their entitlements. The explanatory memorandum notes that the Commissioner will be able to inform a current or former employee about information where the tax office is aware of an actual or suspected failure on the part of an employer to pay superannuation entitlements. Disclosure of compliance activity being undertaken by the tax office to force employers to fulfil their legal obligations would also be permitted.

While the Institute agrees with allowing current and former employees to have access to information regarding their unpaid superannuation entitlements, these details in the case of smaller enterprises should only be disclosed to employees once the employer has been given reasonable time to pay any outstanding amounts. The Institute appreciates the intent of the revisions but nonetheless regards any change to principles of protected information as a significant departure from current practice. While the Institute supports the intent of the disclosure provisions as detailed in the explanatory memorandum, particularly in respect of known serial offenders that continue to avoid the superannuation obligations for employees, there is the potential for unintended consequences for small business owners that are genuinely in difficult circumstances and unable to pay their superannuation obligations for employees. Without sounding colloquial, while a ‘name and shame’ approach might be appropriate for serious offenders, it may not be appropriate for small businesses facing serious cash flow difficulties. Indeed, an unpaid superannuation debt disclosure may well result in jeopardising the financial welfare of the business. In this respect, the Commissioner must exercise any such power with some degree of caution.

**Single touch payroll reporting**

The Institute supports the general intent behind Single Touch Payroll (STP). Reporting of real-time information will increase visibility to monitor the payment of employee entitlements. It will improve the ability of the ATO to monitor non-compliance by employers earlier in the cycle and better inform affected employees.

STP will bring major improvements to system integrity and transparency (especially for super guarantee) while also creating a building block to enable further government reporting. The benefits to employers lie in improvements to the employee commencement and reporting, and the compliance benefits which will flow from a more level playing field for employers. Employees will gain new transparency over their pay as you go (PAYG) withholding tax position and super contributions as reported by employers each payday. The Government has already legislated STP for employers with 20 or more employees who will transition to STP from 1 July 2018. The Government now intends to apply STP for smaller employers coming on board from 1 July 2019 as part of this Bill.

The Government undertook a pilot with small businesses to understand the impacts of rolling out STP for small businesses with less than 19 employees. The pilot acknowledged only limited direct benefits are expected for small business initially. The pilot identified a series of potential barriers to implementation relating to implementation and on-going costs, trust and convenience issues. These barriers were significant for employers who do not have digital software capability. The pilot concluded that a small but significant minority of small employers will likely struggle with the implementation in the absence of help and support. Depending on the solution pathway a business takes, they are likely to find the change effort and potential cost significant. The pilot research highlights that many of these businesses lack the required digital skills, have poor internet connectivity, are reticent about working online, or simply need a helping hand to embrace and tackle this change.

We encourage the Government to consider a range of strategies and tools, in concert with stakeholders, to bridge the capability and confidence gap these employers face. Intermediaries, such as bookkeepers for example, will play a very important role in advising employers in this segment and assisting with the introduction of Single Touch Payroll solutions.

# The Government could use STP incentives particularly for micro businesses (less than 5 employees) who face significant hurdles as a prelude to a more fulsome move towards digital reporting. The Black Economy Taskforce is also looking at the idea of providing tax and other incentives for small businesses who adopt a non-cash business model. The Government has also recently established the Small Business Digital Taskforce. This taskforce will work to ensure that more Australian small businesses can thrive in an increasingly digital economy. Evidence shows that when a small business begins to digitise and use digital tools it creates new growth opportunities and diversifies revenue streams. Adopting digital technologies also helps small businesses to access finance, work smarter and enhances the value of the business when it is time to sell. However, many small businesses are not taking advantage of the opportunities that the digital economy offers. The Small Business Digital Taskforce will talk with small businesses across Australia about their concerns and ideas on how they can better engage in the digital economy. The introduction of e-invoicing in early 2018 can significantly reduce the cost of invoicing as compared to paper based invoicing. Only small businesses using a digital platform will be able to take advantage of this initiative.

There is an opportunity for the Government to bring all these initiatives together to assist the move to a digital environment for small businesses who have yet to adopt a digital platform.

It is reiterated however, that small business owners should be given some additional time to ensure their accounting software complies with the new regulations. It is also noted that the additional disclosure requirements will need to be accompanied by an advocacy or education program so that small business employers are made aware of what information that they will need to supply.

There are only limited benefits for small business despite significant compliance costs particularly for micro small businesses who employ less than five employees. Small businesses see single touch payroll as more compliance. It would help if the Government provided incentives to encourage small business to buy into the STP reporting regime. Implementation costs, software availability, lack of internet connectivity and changes to established payroll practices will pose obstacles for small business employers. Staged implementation and exemptions will need to be factored into any expanded rollout of this new reporting regime.

**Fund reporting**

The Institute supports the provisions relating to fund reporting and in particular commends the provision that allows funds to alter any errors in reports without penalty.

We look forward to discussing further and in more detail, the IPA’s recommendations with the Government and Treasury. If you have any queries or wish to discuss our submission in greater detail then please do not hesitate to contact Tony Greco:

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Yours Sincerely,



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1. OECD (2017), Financing SMEs and Entrepreneurs 2016: An OECD Scoreboard, OECD Publishing, Paris. http://dx.doi.org/10.1787/fin\_sme\_ent-2017-en [↑](#footnote-ref-1)
2. The IPA-Deakin SME Research Centre is currently undertaking an important research project aiming to further understand why small businesses have difficulties in accessing justice. Part of the research is predicated on previous studies and inquiries which show that small business owners experience significant difficulties in understanding laws impacting their businesses (See Productivity Commission Inquiry Report No 72 on Access to Justice Arrangements (2014), and The Competition Policy Review Final Report (2015). [↑](#footnote-ref-2)