



Wayne Wanders, a Real CFO helping Business Owners survive and thrive in these uncertain times



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Wendy Hau, Director, Superannuation Access and Compliance Unit
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
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Re "Securing Australians' Superannuation Budget 2023-24 Consultation paper"

Dear Ms Hau

Please see my feedback around payday super and the "Securing Australians' Superannuation Budget 2023-24 Consultation paper"

In conceptual terms I have no issue with the consideration with the employer payment model that an employees' superannuation should be paid on the same day that their pay is paid into this bank account. The use of a due date is fraught with danger for an employer as they have no control over the payment process of the clearing house.

However, in practical terms, there could be an issue with achieving the objective of employer payment model being the same day as the employee is paid.

New Employee

Let's take an example of a business with a weekly pay cycle Thursday to Wednesday and a new employee has their first day of work on a Wednesday. Now most people will know their bank account, so worst case scenario on the Thursday, the business can calculate and pay the employee without a Tax File Declaration form and withhold the appropriate tax. The ATO provides a calculator that the business can use to do this. Therefore it is relatively easy to do. And if necessary, correct the tax once the Tax File Declaration form is provided. And in some cases the payment is made outside the payroll system to ensure the employee has their money and the payroll and STP reporting is fixed in the next pay run.

But in respect of superannuation, how does the business pay any money to the employee's superfund if the employee has not provided their superfund details to the business in the required time frame. It is my experience that a person's superfund and their account number is not top of mind.

In my 30+ years of dealing with payroll at numerous businesses, it has sometimes taken many weeks for a new employee to provide their superfund details. Even if the employee selects the employer sponsored fund, the business still has to know the member number and it is reliant on the new staff member applying for this.



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Why should the business be penalised by a SG Charge and forgone tax deduction for paying payday super late, if the employee provides their superfund details late?

Any change to payday super needs to acknowledge and allow the business to deal with employee tardiness. Possibly the business should be allowed till the first pay period after the employee provides their superfund details to make the payday super payment for that pay period and any other previous pay periods where super was not paid without any penalties being applied by the ATO.

Honest Mistake

Now let's take an example of the business having the wrong details in their payroll system.

It may be a new employee or an existing employee who has changed funds provides incorrect details (such as a transposition error in member number or the wrong USI for the fund). It may be an employee transferring to a new account, closing the old one and not telling the business of this. It may be an honest mistake by the business where the pay system has an input error when the superfund was selected or the member number input.

In some cases, the business may not know these details are incorrect till the clearing house deposits the funds back into the business bank account. This can take a while, especially if the clearing house has 20 business days to deal with the error. If the business has made an honest attempt to pay the super on time, why should the business be penalised by a SG Charge and forgone tax deduction for paying super late in these circumstances?

In other cases, I have seen the complete superannuation batch be rejected, pending the resolution of the error. In one particular case on Xero, the payroll officer had to go through the payroll to try and work out whom the error related. If the complete batch is rejected, and the business unable to meet their payday super obligation because of an honest mistake, why should the business be penalised by a SG Charge and forgone tax deduction for paying super late in these circumstances?

Any change to payday super needs to acknowledge and allow the business to deal with honest mistakes. Possibly the business should be allowed at least one full pay period after the mistake is identified to rectify the mistake without any penalties being applied by the ATO.

Intention

The intention of the business needs to be considered in all of this. Leaving aside the issues noted above, there are other times where the business wants to make payments on time, but can't due to factors outside their control.

For example, business are reliant on the banking system to transfer both pay and superannuation. And there have been times where an individual bank has technical issues and the business is unable to make (and receive) fund transfers. The business has the intention to meet its pay day super obligations but they are unable to do so due to factors outside their control with their bank.

What about the circumstance where the payroll officer is unavailable on payday due to other circumstances. Say they are in a bad car accident on the way to work. The business owner has the intention to meet its pay day super obligations but they are unable to do so due to factors outside the business owners' control.



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Why should the business be penalised by a SG Charge and forgone tax deduction for paying super late in these circumstances?

Therefore the intention of the business owner needs to be taken into consideration as to whether penalties would apply. And you can look at the proposed wording of the Wage Theft provisions in the proposed *"Fair Work Legislation Amendment (Closing Loopholes) Bill 2023"* which talks about intention.

The legislation around payday superannuation and penalties should be consistent with this legislation and consider the intention of the business. Therefore if the business had intention to pay on time, but was unable to due to reasonable circumstances, then there should be no penalties applied.

Obviously what is reasonable would be subject to view but in this case should include:

- Unable to pay as the employee has not provided their details
- Honest mistakes by either the employee or employer
- Banking system issues
- Clearing house issues
- Emergency issues such as flooding, bushfires, fires storms etc.
- Internet connectivity issues
- Circumstances where the payroll could not be processed which did not have sufficient time to plan for and accommodate this. For example payroll officer having baby on due date should have been planned for, but having a baby unexpectedly 4 weeks early could not have been planned for.

ATO Discretion

As you can see from the above, there needs to be a mechanism to deal with these issues without the business be penalised by a SG Charge and forgone tax deduction for paying super late in these circumstances.

But this should be specified in any new legislation and not left to the "discretion" of the ATO. I have seen the ATO in some circumstances deny the discretion for honest mistakes due to the employee providing late or incorrect information.

Business needs certainty around how these things will be handled. The ATO should have the right to "audit" any such late payment for evidence that the business was not reporting it. But if the business complies with the defined time periods to resolve these issues, and has the intention to comply, the ATO accepts this.

Voluntary Small Business Wage Compliance Code

In order to help small business who may not have the same resources as larger organisations. Consideration should be made to include payday super in any Voluntary Small Business Wage Compliance Code that may be enacted as part of the proposed *"Fair Work Legislation Amendment (Closing Loopholes) Bill 2023"*.

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Superannuation Funds Administration fee

By moving to this model of payday super, Superfunds need to be monitored to ensure any increases in administration fees from receiving significantly more payments, does not eat away any benefits from the member getting paid earlier.

My Experience

I have been a fully qualified Chartered Accountant for over 35 years. The last 20 + of these years has been working one on one with small and medium business owners as a trusted business advisor and their outsourced Chief Financial Officer (CFO). During this time, I have dealt with the payrolls of many different small business and have seen the issues that come up with getting timely and correct superannuation information.

Summary

As noted conceptually pay day super can be a way to improve the superannuation outcomes for individuals. But this needs to be done without putting a business, especially small business who rely on a bookkeeper to process payroll, at risk of penalties for paying super late in when the employee is tardy, there is an honest mistake, or other factors outside the business's control adversely impact on their ability to meet their payday super obligations

If you have any further questions re the above please do not hesitate to contact using the details below.

Yours Faithfully



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