

3 November 2023

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Dear Sir / Madam

Submission: Response to Securing Australians' Superannuation consultation paper

We attach our submission on the consultation paper Securing Australian's Superannuation Budget 2023-24 released on 9 October 2023 by Treasury.

We welcome the opportunity to provide input on the policy and legislative design of the Securing Australians' Superannuation package. Overall we are supportive of this initiative to protect employee entitlements to superannuation. We consider that any proposed changes need to be based in technology & data – particularly linkages to information that employers already provide to the Australian Taxation Office and employee superannuation funds primarily via Single Touch Payroll and SuperStream.

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We would be pleased to discuss any aspect of this submission further. Thank you for the opportunity to contribute to the consultation process.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Steve Batrouney', with a stylized flourish at the end.

Steve Batrouney

Partner Deloitte Tax Services Pty Ltd

Payday super

Defining 'payday'

Consultation questions

1. What implementation issues could arise if 'payday' is defined as being each time a payment is made to an employee with an OTE component?
2. What implementation issues could arise when more regular SG payments are mandated?

1 Response

- 1.1 Where 'payday' is defined as being each time a payment is made to an employee with an OTE component, with a consequent SG obligation arising on each occasion, the administrative burden on employers may be significantly increased.
- 1.2 From the perspective of an employee, a 'payday' may be a weekly, fortnightly and / or monthly occurrence for regular paycycles. For non-regular paycycles 'off-cycle' these will occur as required but are often regular occurrences due to corrections – typically associated with timesheet / rostered based roles. From the perspective of a large payroll function, a 'payday' may be a daily event. This reflects the diversity of pay events that require processing outside of the regular weekly, fortnightly and / or monthly pay cycle. Initiating superannuation contributions for every single paycycle run on any day will increase the administrative burden on employers.
- 1.3 Implementation issues arise if this significantly increased administrative burden arising from daily 'payday' events is not considered in the design of the SG framework, and these issues are considered in further detail in response to consultation questions below.

2 Response

- 2.1 The implementation issues arising from more regular SG payments are varied and fall on all stakeholders.
- 2.2 Employers will be required to update processes and systems to support the more frequent identification and payment of SG obligations. Rather than a quarterly reconciliation of SG contributions, reconciliations may be required on a fortnightly, weekly or even daily basis. Current payroll software systems may require further development and augmentation to meet these requirements.
- 2.3 For clearing houses and superannuation funds, an increased frequency of payments will also be an additional burden on payment and reporting mechanisms that are currently not fit for purpose. Faster payments mechanisms and more streamlined reporting between stakeholders is required to ensure success of the system. A particular concern is the increased frequency of SG contributions that may bounce back from incorrect superannuation fund details provided by employees to employers.
- 2.4 The ATO already receives relevant data from employers via STP2.0 and from Superannuation funds via SuperStream and MATS to identify discrepancies in SG contributions. Upgrades to the ATO systems may be required to manage the significant increase in data resulting from the increased monitoring in relation to the frequency of payments and reporting.

Updating the SG charge

Employer model and 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)?
5. Should there be a standardised due date for SG contributions depending on different pay cycles, independent of the frequency to when salary and wages are paid?
6. Would requiring a new reporting mechanism for employers under an employer payment model to the ATO on payday increase compliance burden?
7. How would intermediaries continue to be incentivised to expedite the processing of employer contributions under an employment payment model?
8. Given reduced payment processing times facilitated by modern payment platforms, is a due date of 3 days after payday for superannuation contributions under a due date model feasible? What would prevent this timeframe?
9. What impact would shorter payment timeframes have on clearing houses and other financial intermediaries that facilitate the payment of superannuation contributions to funds?
10. Would shorter payment timeframes require regulation of these financial intermediaries to ensure payment timeframes are met?
11. How can the payday super model be designed to ensure it can adapt to changes and innovations in payment and data platforms?
12. What are the benefits or risks associated with allowing multiple payment methods and how might this affect payments processing for clearing houses and superannuation funds?

3 Response

- 3.1 The employer payment model may be closer aligned with the objectives of the Securing Australians' Superannuation package however it also presents significant administrative and technical burdens.
- 3.2 Payment of SG contributions by an employer on 'payday' most closely aligns the payment of SG with the payment of salary and wages. This supports the equivalency of SG contributions to salary and wages from the perspective of both employers and employees. The employer payment model is perhaps preferred due to the control that employers have over the outcome. They can initiate payment of superannuation to employee superannuation accounts. They are not in control over when it is actually received in employee superannuation fund accounts.
- 3.3 We note the suggestion that under the employer payment model an additional reporting and data mechanism may be required to provide the ATO with real-time oversight of the day that SG contributions are made. This could be effected via STP2 reporting.
- 3.4 The matching of STP with SuperStream and MATS data that is already available to the ATO is sufficient to identify non-compliance with SG obligations, where the underlying payments and reporting are occurring in real-time, or close to real-time.

- 3.5 The utilisation of real-time modern payment platforms may provide the ATO with a clearer picture and greater ability to perform compliance activities simply on the basis of more timely reporting.
- 3.6 However, the oversight that the ATO requires may not be verification of payment date, but rather identification of exception events that may cause an SG contribution that has been paid by the employer on time to be rejected by either the clearing house or superannuation fund, creating a justifiable discrepancy between STP and SuperStream / MATS reporting.
- 3.7 An additional data and reporting mechanism may be required to provide additional oversight of exception events. This may be more relevant to either clearing houses or superannuation funds rather than employers.

4 Response

- 4.1 The due date model may have a lower administrative and technical burden, however it does not align as closely with the objective of requiring employers to pay SG contributions at the same time as salary and wages. As noted above, if employers are to be responsible and accountable for making employee superannuation contributions on a timely basis, it is important that employers have both visibility and the power to meet the obligation. A due date model for payments to be received into an employee's superannuation fund account does not fulfill this requirement.
- 4.2 This is important because in comparison to the employer payment model it may not have the desired effect in causing employers to pay SG contributions at the same time as salary and wages.
- 4.3 Further, it may allow for circumstances where the due date is missed due to events that are outside of the control of the employer.
- 4.4 In accordance with our comments above, utilisation of real-time modern payment platforms with the possible addition of a data and reporting mechanism on exception events may provide the ATO with a complete compliance picture and prevent making an employer responsible through imposition of SGC for events that are outside of their control.
- 4.5 The due date model may be preferred where technical hurdles such as real-time payments cannot be overcome, or the ATO seeks to minimise the administrative burden by not imposing additional data and reporting requirements on stakeholders.

5 Response

- 5.1 Under the due date model, there could be a standardised due date independent of the frequency that salary and wages are paid. This would account for the increased frequency of 'payday' events for larger employers who have different paycycles which can include weekly, fortnightly (even alternate fortnights) and monthly. This would reduce administrative burden on employers, intermediaries such as clearing houses and superannuation funds..
- 5.2 A single due date cycle provides an opportunity for the employer to perform a single SG contribution reconciliation/compliance activity for pay cycles that occur within a periodic timeframe, i.e., at regular and fixed points in time – perhaps this is monthly.
- 5.3 Where each 'payday' event had an attached due date it may be unreasonably burdensome on employers to perform these reconciliation/compliance activities.

6 Response

- 6.1 As discussed above the ATO may consider further what additional data and reporting mechanisms are required to achieve the objectives of the Securing Australian's Superannuation package.
- 6.2 A risk with the design and implementation of Payday Super is that all of the additional administrative burden arising from increased frequency of payments and reporting may fall on the employer.
- 6.3 The ATO already receives relevant data from employers through STP that describe the employer's SG obligations. It also receives relevant data from Superannuation Funds through SuperStream and MATS that will indicate whether an employer has met those SG obligations.
- 6.4 In this context, oversight of payments leaving an employers bank account through an additional data and reporting mechanism appears to provide only a marginal benefit to the ATOs compliance activities.
- 6.5 The benefit provided by this additional data and reporting mechanism could be achieved through the design and implementation of other aspects of the SG contributions framework.
- 6.6 With real-time payments occurring through modern payments platforms, and real-time reporting by superannuation funds through SuperStream / MATS, a similar effect is achieved, without placing all of the administrative burden on the employer.

7 No Response

8 No Response

9 No Response

10 No Response

11 No Response

12 No Response

Compliance Mechanisms

SG charge 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?

13 Response

- 13.1 The appropriate timeframe is dependent on the ATOs resourcing and ability to identify and confirm underpayment of SG. Monthly is perhaps the most frequent reconciliation period given the volume of information and data. Perhaps quarterly is more appropriate.

14 Response

- 14.1 Employers should be incentivised to quickly fix any underpayments that may occur due to non-malicious reasons.
- 14.2 A mechanism similar to the LPO may be designed that allows employers to pay any shortfall amount directly to an employees superannuation fund account rather than the ATO. This maintains the integrity of Payday Super such that employees receive superannuation contributions on a timely basis, but makes rectification of routine adjustments a simple process that benefits both employees and the employer.
- 14.3 Reporting of this payment may occur to the ATO through STP. As the ATO is not significantly involved in the processing the admin fee may be waived or automatically remitted.
- 14.4 This mechanism may only be available for simple corrections, or corrections that occur within a specific timeframe.

Rectifying underpayments before an SG charge assessment is issued, Tax deductibility and compliance

Consultation questions

15. Should the LPO and carry forward of late payments remain a feature of the SG compliance system in a payday super model? Could an alternate system be adopted whereby late payments apply retrospectively to the earliest period outstanding?
16. Should late SG contributions be tax deductible under certain circumstances, for example when an employer amends the SG charge before it is assessed by the ATO?
17. What kind of prompts or nudges could be provided to employers to be aware of and meet their SG obligations on time?
18. Are there more appropriate incentives outside of the LPO to encourage employers to pay SG in a timely manner?

15 Response

- 15.1 LPO and carry forward of late payments should remain a feature. Although, per 14. above corrections should be regarded as on time depending on the circumstances. Any changes to the LPO and carry forward of late payments should occur in the context of protecting an employee's entitlement and compensation for lost earnings without overly penalising employers for voluntarily correcting shortfalls.

16 Response

- 16.1 Allowing late SG contributions to be tax deductible may meet the objectives of the Securing Australian's Superannuation package by incentivising employers to self detect and quickly correct errors and underpayments.
- 16.2 This incentive may need to be balanced by a punitive SG charge that discourages employers from intentionally failing to meet due dates for SG contributions – which disadvantages employees.

17 Response

- 17.1 The ATO may provide prompts and nudges where it has a sufficiently clear picture of how the SG contributions flow from employer payment, to clearing house to employee superannuation fund accounts.
- 17.2 As discussed variously above this may require utilisation of modern payment platforms to provide real-time payments, and both real-time reporting and enhanced reporting on exception events.
- 17.3 Prompts and nudges may be provided by the ATO to give an employer an opportunity to self-correct prior to an assessment.
- 17.4 This should occur in the context of other incentives for employers to self-correct as discussed above.
- 17.5 Where the ATO is able to provide prompts and nudges, and employers are still not meeting their SG obligations, this may support imposition of more punitive penalties and interest.

18 No Response

- 18.1 Allowing employers to self detect and correct shortfalls with compensation for lost earnings would be an appropriate model to encourage employer compliance. Maintaining deductibility for such voluntary corrections should also be maintained

SG Charge calculation

Consultation questions

19. Would changes to the SG charge be required to ensure the charge remains adequately punitive for non-compliant employers?
20. Does the current nominal interest rate of 10 per cent per annum adequately compensate employees for the foregone interest that would have accrued in the fund had their super been paid on time?
21. Does a nominal interest charge of 10 per cent per annum remain appropriate in a payday super model? Or are there alternative models that could address different degrees or severity of lateness?
22. How should the administrative component of the charge apply? Is per employee, per ATO reconciliation period appropriate, considering your responses above to the appropriate timeframes for ATO reconciliations?
23. Should the amount of the administrative component of the charge be changed? If so, what is the appropriate amount, and why?
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?
25. Are there any other changes to the components of the SG charge that should be considered in the move to a payday super model, in the context of the purpose of the charge? For example, should the punitive aspects of the charge be more proportionate to the size of the non-compliance (that is, the size of the debt)?
26. What should 'additional behavioural penalties' look like in a payday super model?

19 Response

- 19.1 The SG charge may be updated to reflect the more punitive penalties that should be attracted by malicious non-compliance, and the less punitive penalties that may be imposed on errors that occur in the context of good faith attempts to meet SG obligations.
- 19.2 Appropriate recognition of the two circumstances may be facilitated by a more significant nominal interest component or administration charge or automatic application of part 7 penalties on a stepped basis based on culpability.

20 Response

- 20.1 This is a matter for treasury to determine according to the significant data available to it. Notwithstanding, a fixed rate of interest reduces complexity with calculations that may need to occur over different timeframes. This should be encouraged.

21 Response

- 21.1 Deloitte supports a model that addressed different degrees or severity of lateness.
- 21.2 As the nominal interest charge is the component of the SGC that is intended to compensate employees, it may not be the best component of the charge to update to address the level of non-compliance. Out comment in 20.1 above is also relevant here – simplicity is to be encouraged.

22 Response

22.1 The administrative component of the charge may be designed to reflect the level of compliance activity the ATO has performed in relation to the SGC payment.

22.2 Where an SGC payment is significantly late, and occurs in response to an ATO assessment, the administrative component may be more punitive.

22.3 Where an SGC payment occurs as a self-correction in a more timely manner, through a mechanism that does not require an ATO assessment, the administrative component may be waived or remitted. For minor shortfalls this is particularly relevant as we often see the admin fee exceeding the SG shortfall amount. This seems to be an inappropriate balance.

23 Response

23.1 The ATO may determine an appropriate amount that reflects the principles described above. Again, we favour a simplicity model.

24 Response

24.1 Yes, for employers that voluntarily undertake a review and correct shortfalls, we would suggest that deductibility be maintained. This encourages employers to maintain focus on accurately remunerating their employees but recognising that many environments are complex.

25 Response

25.1 Making the punitive aspects of the charge proportional to the size of the shortfall may unfairly penalise larger employers.

25.2 The SG charge model should address different degrees of non-compliance, but this may be ascertained from factors other than simply the size of the shortfall.

25.3 Better factors that the SG charge model may consider may be: the period that the underpayment is outstanding; whether the non-compliance is under a voluntary / self-disclosed process rather than as a result of ATO compliance activity; the underlying reason for the non-compliance.

25.4 The ATO may consider whether it could take into account previous history of compliance, or evidence of regular self-monitoring of compliance by an employer, as factors that should reduce SG charge penalties.

25.5 Could an SG charge model distinguish between instances of wilful negligence as against errors occurring in the context of robust efforts to maintain compliance in complex payroll environments?

26 Response

26.1 Given Part 7 provides for very harsh penalties, we do not consider further penalties would improve compliance.

ATO Flexibility in SG charge remission

Consultation questions

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.
30. Would it be appropriate for the ATO to have discretion to extend the due date for the SG charge? If so, in what circumstances would this be appropriate? Further, what would be an appropriate time period for any extension? Should there be a limit on this?

27 Response

- 27.1 The integrity of the SG charge would be best protected by removing ATO discretion or flexibility.
- 27.2 The SG charge may be designed so that it is more or less punitive according to the severity of the non-compliance. This reduces the circumstance where the ATO may desire or be required to exercise flexibility to remit the SG charge.
- 27.3 Removing all flexibility to remit the SG charge may however disincentivise employers from self-disclosing circumstances of non-compliance where the expected penalties are severe and the risk of an ATO assessment is minimal.
- 27.4 This may go against the objectives of the Securing Australians' Superannuation package by preventing employees from receiving their full SG entitlements.

28 Response

- 28.1 The ATO should distinguish between employers who are seeking to do the right thing and employers engaged in malicious and continual non-compliance.
- 28.2 Underpayment of SG contributions may occur in the context of an employers' good faith attempts to meet their SG obligations. We would favour policies that encourage compliance via voluntary disclosure as against ATO initiated actions where employers have deliberately avoided making superannuation fund contributions for employees over an extended period of time.

29 Response

- 29.1 Where any remission of SG charge occurs, the employee's entitlement to both the shortfall component and appropriate compensation for lost earnings should be protected.

- 30 In circumstances of employers making voluntary disclosures to address prior SG shortfalls we would suggest is likely to encourage compliance without necessary ATO involvement. Perhaps there may be a de-minimis limit per period or limit the prior period to an agreed period – perhaps 2 – 3 years.

Corrections and errors when paying SG, corrections and errors for super funds

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. What are the challenges in correcting SG payments under a payday model? Is this an efficient way for employers to make corrections? Should error messages be standardised across funds?
34. Is the 20 business day time period for superannuation funds to resolve errors appropriate in a payday super model?
35. 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?

31 Response

- 31.1 Voluntary catch-up contributions are another mechanism other than self-assessed SGC that may be used to allow employers a 'grace period' for corrections or a reduced penalty for non-compliance.
- 31.2 The disadvantage of allowing 'catch-up' contributions is it reduces the integrity of the SGC and the requirement to make SG contributions at the same time as payment of salary and wages.
- 31.3 Further, 'catch-up' contributions will not necessarily compensate an employee for lost earnings as a result of late payment of the SG contribution. It may need to also consider an interest element to cover this issue.
- 31.4 This may not meet the objective of the Securing Australians' Superannuation package as it prevents the employees receiving the benefit of the compounding returns resulting from additional time in the fund.

32 Response

- 32.1 It is difficult to say what would be an appropriate period to make 'catch up' contributions. Perhaps a period of 2 – 3 years may be considered appropriate.

33 Response

- 33.1 The most efficient way would be for employer to make contributions directly to employee superannuation fund accounts rather than via SGC Statements lodged with the ATO

34 Response

- 34.1 The time period for superannuation funds to resolve errors should reflect the payment and reporting mechanisms that support the SG compliance framework.
- 34.2 Where modern payment platforms are adopted and real-time payments and reporting are possible, then a relatively shorter time period may be more appropriate.

35 Response

- 35.1 A grace period should be applied to limited circumstances where an employer has met their obligation but for reasons outside their control payment to the superannuation fund has not occurred by the due date.

Choice of fund, stapling and employee onboarding

Consultation questions

36. Would a digital ATO service simplify the choice of fund process and assist employees and employers to confirm the right super details? What functionality would be required? Would this address issues with data integrity under a payday super model? Should such a service be mandated?
37. What are the costs and benefits of requiring employers to offer stapling to employees? Are there other changes that could be made to the choice of fund process? Could a digital ATO service reduce the administrative burden associated with stapling?
38. What are the costs and benefits of a ban on advertising super products during onboarding?

36 No Response

37 No Response

38 No Response

Other payday super issues

SG reporting frameworks

Consultation questions

39. How could a smooth transition be managed to aligning STP, SuperStream, MAAS and MATS reporting, either through changing the reporting requirements to year-to-date values or transaction-based reports?
40. How could a smooth transition be managed if additional fields in reporting are made mandatory?
41. Should a new unique identifier be included as a mandatory field in STP, SuperStream, and MATS which links employers, employees, and transactions?
42. Are there any issues or consequences with including an employer's SG liability and OTE as a mandatory, rather than optional field in STP reporting?

39 Response

39.1 This may best be responded to by the ATO.

40 Response

40.1 This may best be responded to by the ATO

41 Response

41.1 This may best be responded to by the ATO

42 Response

42.1 We do not consider that this would have any impact. Each disclosure is a reflection of the other. Providing both is unlikely to assist with compliance.

SG contributions for the 2026-27 financial year

Consultation questions

43. What is the best mechanism to avoid disadvantaging employees who would reach the concessional contributions cap in 2026-27 due to the accounting of SG contributions in the year the policy commences?

43 Response

43.1 It may be appropriate to increase the concessional contribution cap in FY2026-27.

Maximum contribution base calculations

Consultation questions

44. On what period should the maximum superannuation contribution base be calculated in a payday super model? Would there be issues if it remained a quarterly calculation? Are there any other mechanisms that could help prevent employers paying over the concessional contributions cap for employees?

44 Response

44.1 It is likely that the application of the maximum superannuation contribution base would need to be redesigned so that rather than it being a quarterly calculation, an employer is required to make SG contributions until the concessional contribution cap is reached. This would be from the first day of the relevant measurement period to the last day. Currently many employer apply an averaging basis over a quarter.

44.2 This may align with mandating reporting of YTD SG contributions by STP, but may require the adjustment of payroll processes and systems to accommodate the different method of calculation and application.

Defined benefit members

Consultation questions

45. Are there any other changes that will be required for defined benefit members?

45 Response

45.1 There should be an indicator in STP that allows defined benefit members to be identified and thereby be excluded from any ATO monitoring and / or compliance requirements.

Self-managed superannuation funds

Consultation questions

46. Should there be any changes to the reporting frameworks for SMSFs and/or Defined Benefit funds to the ATO?

47. Are there any other changes that will be required for self-managed superannuation fund members?

46 Response

46.1 A quarterly calculation is preferred given it is well understood and is an appropriate average of earnings over a period in a financial year

47 No Response

Other issues

Consultation questions

- 48. Are there any other impacts on stakeholders or considerations Government should consider in policy design?
- 49. What further changes would be required under the current rules to allow employers to meet payday super requirements?

48 Response

- 48.1 Characterising the payment of SG contributions as solely the responsibility of the employer fails to capture the number of stakeholders and the complexity of the SG compliance framework.
- 48.2 Such a characterising may lead to a design of a Payday Super framework that imposes significant additional administrative and reporting burdens on employers.
- 48.3 To achieve the objectives of the Securing Australian's Superannuation package, the whole SG framework must be upgraded. Real-time payments are one aspect of the system that has the potential to uplift the whole SG compliance framework.
- 48.4 Without appropriate emphasis on the technological aspects of the SG compliance framework, Payday super risks becoming an unnecessary additional cost for employers.

49 No Response

- 49.1 This will require further consultation as policy and administration is shaped over the next 12 – 18 months.