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The Treasury

TREASURY LEGISLATION AMENDMENT (REPEAL DAY 2015) BILL

SUMMARY OF CONSULTATION PROCESS

This Bill is part of the Government's election commitment to set aside at least two parliamentary sitting days each year for the express purpose of repealing counterproductive, unnecessary or redundant legislation.

This Bill was introduced into Parliament on 12 November 2015 as part of the Spring 2015 Repeal Day.

Consultation process

The measures in the Treasury Legislation Amendment (Repeal Day 2015) Bill 2015 were consulted on through two separate consultation processes.

Public consultation on the draft Treasury Legislation Amendment (Repeal Day 2015) Bill 2015 and draft explanatory material was conducted between 28 August and 28 September 2015. The draft legislation and explanatory memorandum were available on the Treasury website. 19 submissions were received.

Public consultation on the draft Superannuation Guarantee Legislation Amendment (Simplification) Bill 2015 occurred between 21 August 2015 and 18 September 2015. The draft legislation and explanatory memorandum were available on the Treasury website. In addition, a number of business, accounting and superannuation bodies were invited to participate in the consultation process. Ten submissions were received, including one confidential submission.

- In 2014, Treasury undertook stakeholder consultation to explore possible options to reduce the superannuation compliance burden for small business. Stakeholders were generally supportive of reforming the Superannuation Guarantee (SG) charge to reduce the complexity and harshness of the regime.

Summary of key issues

The majority of submissions commented on Reducing the Number of Business Identifiers and Simplifying and Reducing the Harshness of the Superannuation Guarantee Charge.

Reducing the Number of Business Identifiers

The introduction of the Reducing the Number of Business Identifiers measure has been delayed and will no longer form part of the Treasury Legislation Amendment (Repeal Day 2015) Bill 2015. The consultation indicated that the private sector is broadly supportive of this initiative. However business identifiers are part of, and touch on, numerous systems, databases, processes, forms,



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contracts, reporting obligations, etc. Removing some identifiers will involve a number of changes for the private sector. Based on this, more time for implementation was requested.

Simplifying and reducing the harshness of the SG charge

Seven submissions generally supported the changes: five submissions from business and accounting bodies supported the changes; one submission supported the changes in-principle; one submission from an association supported the changes on the condition that the ATO be given more resources to investigate non-payment of SG by employers.

Three submissions from superannuation bodies did not support the changes because of concerns the changes will reduce incentives for employers to comply with their SG obligations.

Non-compliance is a significant issue

Three submissions expressed concern that non-compliance is a significant issue that needs to be addressed and that the current SG charge regime should be strengthened or maintained; penalties should not be weakened.

There are still significant penalties for employers who do not comply with their SG obligations under the SG charge regime. In particular, the SG charge remains non-deductible. That is, employers can't claim the SG charge as a business expense at tax time like they can for payments of on time SG. This is often considered a significant penalty by employers.

Likewise, penalties of up to 75 per cent of the SG charge liability and administration charges can still be levied on employers under these changes. These penalties and charges act as a deterrent for employers that do not pay their SG obligations on time.

Retrospective application of the changes

There was some concern that the changes are not being implemented retrospectively and that the current harsh rules will continue to apply to SG charge assessments from quarters prior to 1 July 2016.

The Government understands that the current SG charge regime can be very punitive for employers. However, these changes are not retrospective.

The changes to the SG charge will apply to SG quarters from 1 July 2016. Applying the changes prospectively to SG quarters will ensure all employers will be treated alike with respect to relevant SG quarters.

Paying the SG charge by two or more instalments

There was some concern as to how nominal interest would be calculated under the changes where the SG charge is paid through two more instalments.



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The draft Bill has been amended to ensure the changes to the SG charge take into account when a partial late payment of SG contributions owing has been paid. The principal for calculating the nominal interest will be reduced to the amount owing from the date of the last partial payment made by the employer. This approach to nominal interest balances simplicity for employers with the fairness of taking into account partial payments made.

Discretionary power for the Commissioner of Taxation

Consultation suggested that the Commissioner of Taxation should have discretion with respect to the SG charge where employers have made an honest mistake and there is a genuine attempt to rectify the breach.

There are constitutional concerns around allowing discretion about the application of taxation.

However, the ATO's Tailoring the Employer Experience with Superannuation (TEES) project applies a risk based compliance approach by the ATO to employers. The TEES project means that the ATO will decide upon the course of action to be taken against a non-compliant employer based on their risk profile (for example, their compliance history). This makes it easier for employers to meet their SG obligations.

The SG charge should be tax deductible

Two submissions suggested that the SG charge should be made tax deductible.

In the context of the changes in this Schedule, the Government considers that retention of the non-deductibility of the SG charge is important to deter non-compliance.

SG charge statement

It was suggested that the requirement to lodge an SG charge statement should be removed.

The requirement to lodge an SG charge statement is consistent with other Taxation and related obligations and is an important integrity and compliance measure.

Administrative charge

It was also suggested that the administrative charge of \$20 per employee per quarter should be removed.

The administrative charge forms parts of the penalties for non-compliance; it acts as an incentive for employers to comply with their SG obligations.

Lost and unclaimed superannuation reforms

Two industry bodies representing superannuation funds and trustees made separate submissions in relation to the measures in Schedule 2. While both submissions supported the measures, one submission's support for the removal of the Lost Members Statement measure was conditional upon certain transitional reporting and process arrangements. The ATO is working with funds to resolve



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any outstanding issues and ensure that necessary arrangements are in place to implement the measure.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Victoria Henry on 02 6263 2086.

Thank you to all participants in the consultation process.