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AUSTRALIA + NEW ZEALAND

19 February 2018

Manager
Retirement Income Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Submitted via email to: superannuation@treasury.gov.au

Dear Sir/Madam,

Submission – Superannuation Guarantee Integrity Package

Chartered Accountants Australia and New Zealand welcomes the invitation to make a submission on the above titled review.

Please note: our submission responds solely to the issues raised in the consultation paper and related material and does not imply our views on other aspects of the superannuation system or on any past or future policy proposals.

We would be pleased to discuss any aspect of our submission.

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Exposure Draft Legislation

Our comments are framed around the various schedules of the exposure draft legislation released as part of this consultation – *Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018*. We do not have comments about each Schedule.

Overall employer compliance with Super Guarantee obligations is high

We note that the ATO have told the Senate Economics References Committee that overall most employers make their best endeavours to comply with their Super Guarantee obligations.

There are a small group of employers – typically small to medium sized businesses – which do not comply for a variety of reasons.

In our view the current regulatory settings are inadequate to further improve Super Guarantee (SG) employer compliance.

Schedule 1 – Directions and penalties in relation to superannuation guarantee charge

There are two parts in this schedule – the ability of the ATO to demand that employers receive some form of “education” to help them understand their Super Guarantee (SG) obligations.

Education Directions

Given the high levels of compliance amongst employers we believe most employers understand their obligation to pay compulsory contributions.

In the majority of cases employers do not pay SG super contributions by the required date because of business cashflow pressures. In some cases employers will not have adequate cash to make these contributions or will prioritise other expenditure, such as essential trade creditors, to ensure they can remain a going concern.

However it is a reality that the Super Guarantee provisions are complex especially in relation to contractors and whether or not they satisfy the employee definition under the SG provisions. This confusion occurs despite the fact that the SG provisions were put in place more than 25 years ago. We note that employers, and their tax advisers, regularly seek binding rulings from the Australian Taxation Office as to the status of contractors. This level of complexity and uncertainty is unacceptable and needs urgent review.

On balance we support the need for proposed Division 295 of the *Taxation Administration Act 1953* (TAA 1953).

Payment Directions

We note that the ATO currently has power under Division 268 of the TAA 1953 to direct employers to make SG payments. We have no information as to how frequently it has been used and areas where the ATO’s power has been found inadequate.

We would prefer that Division 268 were amended to give the ATO additional power rather than a new TAA 1953 Division.

If the government elects to proceed with proposed Division 296 then we believe proposed paragraph 296-25(1)(c) may need to be amended because it is not clear to us who has the ability to reduce a liability to nil under that provision.

Schedule 3 – Single Touch Payroll

Notwithstanding the Superannuation Guarantee Cross-Agency Working Group's final report, the timing of the proposed STP amendments has come as a surprise to those – including Chartered Accountants ANZ – involved in the STP Advisory Group.

Whilst it is no doubt true that “A significant proportion of superannuation guarantee non-compliance is attributable to small businesses” (para 3.10 of draft EM), we also anticipate that the SME sector may struggle the most with STP implementation.

We acknowledge however that the government's focus on superannuation as a priority area is prompted by the fact that SG non-compliance impacts the retirement incomes of individuals and contributes to the escalating cost to government of the age pension. SG reporting is already part of the STP design.

Chartered Accountants ANZ has long advocated that Stage 1 implementation (1 July 2018 and 1 July 2019) of STP should be uncluttered by additional requests from regulators (not just the ATO) for additional payroll data reports. We think it is important to the overall success of STP to minimise, as much as possible, the compliance costs which employers and their payroll providers will inevitably feel during Stage 1.

We are aware that there have been concerns by some software developers that the proposed amendments would impact their schedules for developing and testing STP Stage 1 software. We would be concerned if this latest legislative development resulted in further delays, and led to even more requests to the ATO for deferred start dates for STP.

In terms of the practical ramifications for employers, those employers who currently calculate ordinary times earnings after salary sacrifice amounts have been taken into account will (as a result of this Bill) need to do an “add back” to comply with the new STP reporting. This prompts the following observations:

- Is there enough time to educate employers \ payroll functions? We note that superannuation salary sacrifice arrangements are not unique to the private sector. They are widely used in the public sector and the charitable sector.
- “Aggressive” salary sacrifice arrangements (e.g. where an individual employee's entire salary is sacrificed into superannuation) whilst reduced because of reduced contribution caps will need to be revisited as a result of the proposed amendments.
- It is not always clear what salary sacrifice contributions are being made, and when (e.g. a year-end bonus where the employee has earlier selected that any bonus entitlement be paid into superannuation). Additional time may be needed to calculate and report under STP these year end, one-off salary sacrifice arrangements.
- Existing ATO guidance on salary sacrifice arrangements will need to be updated to reflect the new measures. The revised guidance will also need to note the difference between salary sacrificing into superannuation and salary sacrificing to obtain other benefits.

Finally, we did not find the draft explanatory memorandum helpful in setting out what the STP changes are actually meant to achieve. We strongly recommend a re-write.

Schedule 5 – Compliance Measures

Overall we support the amendments proposed in this Schedule. However in our members' experience the courts will be extremely unlikely to impose a prison sentence for a failure to comply with proposed Section 255-115 of the TAA 1953. To this end we believe it would be better to remove this proposed penalty.

Schedule 6 – Amendments relating to employee commencement

The ATO is already authorised to disclose certain information to employers relevant to employee commencement (i.e. on-boarding linked to myGov data). We understand that the Bill is looking to authorise even more on-line data sharing via the software interaction with the employer.

We also understand that this additional authorisation brings into play the government's proposed new approaches to authentication of identity (i.e. the Digital Identity Framework being developed by the Digital Transformation Agency and agencies such as the ATO). Few Australians know about this project, nor do they appreciate how pervasive identity authentication will become as Australia gradually moves towards government online. Related data security and privacy issues have yet to be aired in the public domain.

Identity authentication and data sharing is a work-in-progress project and it is difficult for external stakeholders such as Chartered Accountants Australia and New Zealand to comment. However, as a professional association representing many CAs in public practice, we reiterate the importance of providing intermediaries with client-authorized access to client data, including that which may be relevant to STP. For example, a client's tax residency status will have an important bearing on PAYG withholding, and an accountant should be able to verify that ATO systems correctly record a client's residency status and the date from which residency status changes.

Should you require any further information or wish to discuss the contents of this submission, please contact Tony Negline, Head of Superannuation on 02 8078 5404 or by email at tony.negline@charteredaccountantsanz.com

Yours sincerely,



Liz Stamford FCA
Head of Policy