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

SCHEDULE 1

Directions for Education

Division 295

Variation Request

295-30 (5)

The proposed system whereby an employer applies for a variation and for whatever reason that variation is not processed by the ATO within 28 days (maybe the form was lost, maybe the system for communication with the ATO (digital we hope) is not meeting acceptable service levels. The negative consequence of the ATO lack of action is upon the employer with \$4200 penalties looming. This is not acceptable.

We acknowledge that this is an action following significant non-compliance of the employer and then notification by the ATO of the education requirement, however any submission for a variation such as this by Government should place a burden on Government to respond within time or the consequence is in favour of the employer.

Directions to pay

Division 296

Administrative burden

The SGC system is a nightmare of complexity of forms and calculations. Even if you apply the Late Payment Offset you have to complete the SGCharge calcs for each quarter for each employee separately and then the Late Payment Offset for each quarter for each employee, manually. The spreadsheet is only a summary of what else has to be provided. The Online version is only available (currently) on the Business Portal.

Government should direct the ATO to initiate a total redesign of the SG Charge compliance administration.

This direction to pay requirement should embrace the late payment offset system, encouraging payment by the employer of all late payments direct to the SuperFund and then an effective reporting of the late payment to the ATO.

Incentives to comply

In our view we would have liked to see the Government take a new approach. Many employers may be incentivised to backpay Super if there was any upside. Currently paying old Super is

fraught with only negative repercussions: it is subject to penalties, admin penalties, interest and is not a tax deduction. There is a huge incentive to stay under the radar and not look.

What if the law still required that payment, still required the payment in time and applied interest when late, automatically, but the payment and interest are deductible? (We believe more employers would seek to correct their situation if the Government were more acceptable to a positive impact)

We would still like to see the admin penalty regime in place (non-deductible) and for it to be applied upon the repeat offenders etc.

The new provisions “directions to pay” have been applied to the existing SGCharge regime. Administration of the SGCharge is extremely burdensome on any employer who may seek to catch up and comply

“Serious contraventions”

Refer 1.76 to 1.79 of the EM: The ATO seems to be restricted from acting “giving Direction” unless is “ongoing and intentional disregard”. This is too restrictive.

Allow disclosure and repayment plans

The legislation should empower the commissioner to engage the employer in setting an agreed disclosure of outstanding SG and then negotiate a repayment plan. The current regime that enforces that once an amount of unpaid SG is disclosed that it must be paid in full is again a deterrent to moving towards compliance. Section 296-25(1) does not go far enough.

296-10(3)(c) requires any “period before the end of which you must comply....(which must end at least 21 days *after* the date the direction is given)”

This means that the requirement has in effect a minimum 21 days notice period but opens the door to allowing a “repayment plan” to be put in place. We believe the ability for the ATO to instigate agreed payment plans for the late payment of SGC should be specifically prescribed in the Act.

We also recommend that the Act prescribe a maximum period, maybe 2 years, from the Direction to ensure that the ATO is given a legislative parameter to impose the requirement upon the employer.

The EM in 1.87 to 1.101 allows variations and considerations of the employers endeavour to reduce liabilities etc.

We recommend the inclusion of:

- specific allowance for Payment Plans (payment by agreed instalment schedule).
- specific direction to the ATO that allows an employer to engage in scheduled repayment of existing debt without any repercussion on other taxes or amounts outstanding
- specific direction to the ATO that allows scheduled repayment of existing debt in conjunction with agreed strategy for payment of current SG obligations.

Any non-payment

We would support further reform that allowed the commissioner to issue “Directions” in any case of non payment. The penalty provisions, in some cases, speaks of penalties “up to” which allows lesser penalties to be imposed. As stated above an ability for the ATO to issue directions to an employer that required them to pay directly to the superfund a late payment (Late Payment Offset provisions to apply) including a prescribed interest amount and to make simpler disclosures would enhance the system.

SCHEDULE 2 – Disclosure

The provisions appear to provide permission to the ATO to disclose but only in the event of “failure” to pay SG.

(There may be other law that solves the issue I raise herein however it appears inconsistent to have this law only specify “failure”)

The design of Single Touch Payroll systems and the respective disclosure of the STP payroll information on mygov and the portals appears to be premised on the ability of the ATO to make available (“disclose”) both the amounts of Super (including or limited to SG) that has been accrued and reported by the employer and also the amount of Super that has been received by the respective superfunds.

We would support these provisions to allow the ATO to “disclose” the amounts of super accrued and the amounts of super received by the fund.

SCHEDULE 3 – Single Touch Payroll Reporting

Reporting of Sacrificed amounts by employers

Where was the consultation on these provisions before drafting?

The EM appears to align these new provisions with the purpose of detecting those employers who are allegedly incorrectly reducing their payment of SG obligated amounts by including SG amounts inside agreed Salary Sacrificed superannuation contributions.

This will NOT be achieved

The proposed additional disclosure will NOT detect this alleged incorrect behavior.

The EM states:

- 1.1 All employers are required to report ‘sacrificed ordinary time earnings amounts’ and ‘sacrificed salary or wages amounts’ within the meaning of the SGAA 1992 (salary sacrificed amounts) paid to their employees’ superannuation funds under the Single Touch Payroll reporting rules.

Immense increase in red tape

Please note that you are creating a significant amount of increased reporting and a significant amount of transitional work upon every employer in order to provide this information.

We are prepared to be corrected however we recommend the Government obtain evidence to the contrary of the following statements:

1. Payroll systems do not separately allocate “Sacrificed” amounts of an employees agreed package from OTE vs Salary and Wages.
2. Many Employers do not currently record in their payroll systems the Gross Package amounts and therefore do not record the Sacrificed amounts. These calculations are outside the payroll software.
3. If the payroll system is setup to include the Salary Packaging arrangements including sacrificed amounts, the additional disclosure of the amounts being Sacrificed have not been included in the design of STP fields to be reported and this is a significant change to systems of the employer and the software.

4. Sacrificed amounts are not limited to Superannuation, therefore in order to achieve the proposed outcome (detection of incorrect SG inclusion in Sacrificed amounts), the prescribed disclosed amounts "sacrificed...amount" will include other amounts that are sacrificed.
5. The proposed additional disclosure will NOT provide the information to the Government to achieve the desired outcome (refer example below)

Example

An employee agrees on a package that would report \$100k plus SG of 9.5% hence a total cost to employer of \$109,500

STP current law would therefore report

Reportable Taxable Gross	\$100,000
Tax withheld	\$ X (not calculated for the purpose of this discussion)
Super Obligation	\$9,500

Subsequently they agree to sacrifice and amount of \$20k into super. The payroll system will now reflect taxable gross salary of \$89,500 and super contribution of \$20k.

We note that STP has been designed to allow an employer to report either their total Super obligation or the lesser SG amount. Industry recommended it be the total employer obligation however Government determined to allow either.

STP current law would now have them report

Reportable Taxable Gross	\$89,500
Tax withheld	\$ X (not calculated for the purpose of this discussion)
Super Obligation	\$20,000

(noting this is all perfectly legal)

The alleged "issue" with employers including SG in the sacrificed amount is that in some form it was thought that somebody is missing out on something.

This example shows that the total cost to the employer is still \$109,500 and the total benefit to the employee (ignoring the tax effect) is still \$109,500

The "Issue" would arise if the employer reduced the total package amount, ie because \$20k super is being paid they did not include the SG on top of the Salary to calculate the total package amount. The STP reporting (based on current law) in this instance becomes

Reportable Taxable Gross	\$80,000
Tax withheld	\$ X (not calculated for the purpose of this discussion)
Super Obligation	\$20,000

The Government would see \$20k super which is more than 9.5% of \$80k and be satisfied that SG obligations have been met. It would be up to the employee to know the amount their total gross package before sacrifice should have been.

The increased reporting proposed would (prima facie) result in the following report

Reportable Taxable Gross	\$80,000
Tax withheld	\$ X (not calculated for the purpose of this discussion)
Sacrificed amount	\$12,400
Super Obligation	\$20,000

This does not indicate to the ATO any wrongdoing by the employer. It provides no further information. Unless the employer detected and advised the reduction in package, government would not be aware of any reduction. We question whether it is in the ambit of this law to enforce the quantum of a Package amount.

What if the package remained at the \$109,500 but the sacrifice included \$10k for provision of motor vehicle and \$10k to be paid for all super?

Reportable Taxable Gross	\$89,500
Tax withheld	\$ X (not calculated for the purpose of this discussion)

Sacrificed amount \$11,498 (\$20k less the 9.5% super of \$8,502)
Super Obligation \$10,000

Again the ATO receive no information that indicates any wrong doing or in fact that they are fully compliant.

If the employer did reduce the package the reporting would be

Reportable Taxable Gross \$80,000
Tax withheld \$ X (not calculated for the purpose of this discussion)
Sacrificed amount \$13,400 (\$20k less the 9.5% super of \$7,600)
Super Obligation \$10,000

Again the ATO would have no indication of any wrongdoing.

Recommendation:

1. Government research the quantum of cases where the employer is incorrectly decreasing the total package amount due to a Sacrificed superannuation amount to ensure that there is an adequate impact assessment to justify this immense increase in redtape regulatory burden upon all employers.
2. Government remove these provisions and seek significant industry, software and professional consultation to establish a mechanism to achieve the desired outcome.

Please contact the author if you wish to clarify any of the proposed law or seek any clarification of the matters raised in the above

Yours faithfully



Matthew Addison
Executive Chairman