

Inspector General Taxation - Superannuation Guarantee Charge Review

ASFA Submission

July 2009

Association of Superannuation Funds of Australia

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Please Note:

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10 July 2009

Mr Ali Noroozi
Inspector-General of Taxation
GPO Box 551
SYDNEY NSW 2001

Dear Mr Noroozi,

Re: The Review into the Tax Office's administration of the Superannuation Guarantee Charge (SGC)

The Association of Superannuation Funds of Australia ("ASFA") is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. Our members include corporate, public sector, industry and retail superannuation funds plus service providers who provide professional services to SMSFs, account for more than 5.7 million member accounts and over 80% of superannuation savings.

ASFA would like to thank you for the opportunity to provide comments in regard to the above review into the Tax Office's administration of the SGC.

Introduction

As an opening statement ASFA believes that the compulsory superannuation system in Australia works well. With very little intervention from the regulators approximately \$70 billion in employer superannuation contributions finds its way into the accounts of superannuation fund members.

However according to the 2008-09 Australian Taxation Office (ATO) Compliance Program there are around 20,000 complaints made by individuals who believe they have not received sufficient superannuation support from their employers.

There is an estimated 11 million workers in Australia who are eligible for the superannuation guarantee (SG), therefore the number of complaints received expressed as a percentage of the total workforce equates to around 0.2%.

Although this represents a small amount, ASFA is aware that in some cases those who have made valid complaints are then faced with significant delays in resolution which then leads to little or none of their superannuation entitlement being paid. ASFA is also aware that historically, many employee complaints have been received after the employee has stopped working for the employer or when the employer is close to liquidation. This delay in lodging a complaint is often critical in achieving a successful outcome to the complaint.

Nevertheless, ASFA acknowledges the work of the ATO in making available the employee SG calculator to help determine whether employees are eligible for SG contributions and whether the employer is paying the correct amount. ASFA views SG compliance as an important feature of our superannuation system, but it also understands that ensuring 100% compliance, as is necessary in any compulsory environment, is difficult.

It is in light of this background of a very effective system with a high natural level of compliance that the following points are raised.

1. Reintroduce and expand the requirement for an employer to provide information about SG payments on payslips.

The previous Government legislated a requirement for employers to include information on payslips about an employee's SG entitlement when it was paid. The legislation was to be reviewed after a specified period of time but was repealed before the expiration of the review period.

There is now no legislated requirement for an employer to provide information about SG contributions to an employee. There is only a requirement on the employer to pay. Without a requirement to provide information an employee has no basis to confirm that their employer has paid their SG entitlement until the employee receives their annual statement from their superannuation fund. For contributions due to be paid by the end of the September quarter (28 October), information from the fund about contributions paid by an employer might not be received until December the following year.

Placing the payment details on payslips allows employees to see in almost real time, that their SG contributions are being paid. For those employees who rely on their super fund statements as verification of payment the delay in receiving the information will result in a delay in notification to the ATO. This makes the ATO's task more difficult and, in some cases, results in the ATO being notified that there may be a compliance issue only after the employer has gone out of business.

ASFA recommends the reintroduction of the requirement for an employer to notify an employee on their payslip of the amount of SG contributions made and the name of the fund to which the contributions were made.

ASFA further recommends that the notification requirement be expanded to include the date on which the contribution was paid.

2. Mandate minimum information requirements for enrolling a member in a fund

For a member to be able to take an interest in their fund it is essential that information such as new member welcome packs and annual statements are able to be delivered to the member. For employer enrolled members, there is an assumption in the law that all of the relevant product information will be provided by delivering the information to the new member within a short period of them being enrolled.

However, in order to deliver this information to the member, the fund needs to have contact details for the member. Unfortunately, within the relevant legislation, there is no mandated minimum set of information that must be provided prior to issuing an interest in a superannuation fund.

The result is that where a member is enrolled with incomplete information they may never receive their welcome pack or annual statements and thus have great difficulty in determining their superannuation fund. In turn, this makes it difficult for individuals to check that their SG entitlements have been paid.

ASFA recommends that funds should be prevented from enrolling a new member where the name, date of birth and residential address of the member is not provided.

3. Mandate the reporting to the ATO of employers who do not provide a TFN

Since 1 July 2008, it has been mandatory for an employer to provide an employee's TFN either within 28 days of the first contribution made for the employee, or within 28 days of the TFN subsequently being provided to the employer.

Despite this mandatory requirement, some funds are reporting that up to 30% of new enrolments are made without the TFN being provided.

As it seems implausible that 30% of employees do not provide their employer with their TFN, the figure suggests that employers either do not understand the law, or they are ignoring the law. Either way, making mandatory the reporting to the ATO of employers who fail to provide TFNs for their employees would reinforce the need on employers to not only provide the prescribed information but to also pay the relevant amount of SG.

ASFA recommends that from a prescribed date, superannuation funds be required to notify the ATO of each case where a member is enrolled by an employer and the member's TFN has not been provided within 90 days of receipt of the first employer contribution.

4. TFN Validation

The presence of TFNs in the superannuation system is central to the ATO's administration of the superannuation contribution caps. The ATO requires superannuation funds to report member TFN information as part of the annual member contribution statement (MCS) reporting process.

To this end, superannuation funds actively seek TFNs from members and contributing employers.

On receipt of a TFN funds run the number through a validation process. However this process has limitations as it can only confirm that the number is a valid TFN number, it does not confirm that the number belongs to the person it has been quoted for.

Where a TFN is proven to not belong to the individual, and the ATO is able to identify the member as the holder of a TFN the fund is required (through the issue of a SIS section 288B notice) to deduct no-TFN tax and to return all non-concessional contributions. This may occur some considerable time after the member first joined the fund.

ASFA considers that the importance placed on the TFN by the legislative framework warrants the provision of special services by the ATO to support collection and verification of TFNs. This will also assist in meeting the Government aim of reducing the number of lost superannuation accounts.

ASFA recommends that a facility be established whereby a superannuation fund can provide the ATO with the name and address information and the TFN of a new member and the ATO is able to confirm whether or not the person is the owner of the TFN.

ASFA further recommends that, in conjunction with the recommendation in point 3 above, that where a fund advises the ATO that an employer has not provided a TFN that the ATO be enabled to supply the TFN to the fund at that point in time (should they be able to identify one).

5. Guarantee the superannuation guarantee

The compulsory superannuation contribution system we have in Australia is a vital pillar to our retirement incomes policy. However, although called the superannuation guarantee, it's not guaranteed. Unlike the pay as you go (PAYG) tax system where tax instalments deducted from wages are guaranteed by the Government, the entitlement to compulsory employer superannuation contributions is not.

Further to this the General Employee Entitlements and Redundancy Scheme (GEERS) that was introduced to guarantee to some extent the entitlements of employees who have lost their jobs and are owed certain entitlements as a result of a liquidator or trustee in bankruptcy being appointed, specifically excludes employer superannuation contributions from the workings of GEERS.

Because of the compulsory nature of our superannuation system ASFA believes that GEERS should be expanded to allow for unpaid SG.

ASFA recommends that the GEERS be expanded to include unpaid SG.

6. Greater prosecution powers

Currently the relevant SG law allows for the prosecution of employers where they fail to report to the ATO. However, there is no provision to prosecute employers for failing to actually pay the SG of employees to the relevant fund. As an enhancement to the compliance capabilities of the ATO and ability to prosecute for failure to pay SG on behalf of employees needs to be introduced.

ASFA recommends that the SG Act be amended to allow for the prosecution of employers who fail to pay SG.

7. The SGC should be payable direct to the superannuation fund

Since the inception of the SG system the ATO has been the central figure in the collection and distribution of unpaid SG. Employers who failed to meet their SG obligations by the date are required to pay the outstanding SG to the ATO.

This then triggers a further process where the ATO needs to reconcile the payments it receives and then pay these amounts onto the relevant superannuation fund for the relevant employee on whose behalf it has collected the outstanding amount. ASFA believes that the same outcomes can be achieved through the payment of outstanding SG directly to the relevant superannuation funds. This would cut out a significant part of the process, save time and resources.

ASFA recommends that outstanding SG amounts be payable by the employer directly to the relevant superannuation fund.

8. Employees as members of superannuation funds need to be better engaged with their retirement savings.

ASFA considers that the most effective way to boost SG compliance is for employees to take ownership of their superannuation by understanding what their entitlements are, what their employer's obligations are and by checking their superannuation account balances. To effectively achieve this employees need more information than what is currently available to them.

A main feature of ASFA's policy work for the coming 12 months will be member engagement. ASFA sees this occurring to some extent through members becoming personally educated in regards to their retirement savings options. ASFA hopes to achieve this through encouraging the industry to provide to their members a combination of factual information, disclosure and advice that will be available in a timely fashion and in a useful format.

If you have any questions in regards this submission, please do not hesitate to contact Tony Keir, Senior Policy Adviser on (02) 8079 0815.

Yours sincerely

Melinda Howes

Director of Policy and Industry Practice