

Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (c)

Submission No. 79

(Supplementary to Submission No 49)

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Institute of Actuaries of Australia

25 September 2000

Ms Sue Morton
Secretary
Senate Select Committee on Superannuation and Financial Services
Parliament House
Canberra ACT 2600

Dear Sue,

Once again, thank you for the opportunity to appear before the Committee on 1 September 2000. I have attached a marked up copy of the transcript of evidence. Please let me know if you need any clarification of the minor amendments.

You will recall that we were asked a number of questions, which were taken on notice. Our answers to these questions now follow.

Superannuation Guarantee (SG) Penalty Regime

We do have a number of concerns with the current penalty regime. We consider that the current penalty system for non-compliance with SG is too inflexible and can lead to inappropriate outcomes in the case of minor administrative errors.

As was noted at the hearing, there are 6 separate penalties that are imposed on an employer for not complying with the SG requirements. These are as follows:

- ◆ \$50;
- ◆ \$30 for each employee for whom the correct contributions have not been paid;
- ◆ Superannuation guarantee charge is based on the generally higher "salary and wages" rather than Ordinary Time Earnings (or other applicable notional earnings base);
- ◆ Interest must be added from the start of the relevant year, rather than from the date the contribution should have been made. This is potentially an interest penalty of almost 13 months;
- ◆ The payment of the SG charge is not tax deductible;
- ◆ Further penalties of up to twice the SG charge apply for failing to keep records, and certain other offences.

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The first 5 penalties are automatic and apply even if the relevant contributions were paid in full shortly after the due date. Only the sixth is at the discretion of the ATO.

In our view, the first five automatic penalties, in combination, are extreme for what might be a minor technical breach of the payment requirements. The calculations required are also complex, particularly where most (but not all) of the required contributions were paid.

If SG payments are required quarterly (which we support subject to a suitable introduction period and a more appropriate penalty regime), the difficulties for employers in this respect will be compounded.

We also consider that the current procedures for fixing errors in relation to SG payments are too cumbersome, are not well understood and result in further benefits being "lost".

Where an employer discovers that it has underpaid the contributions to the fund, there is no option but to make the payment of the SG Charge to the ATO, including the completion of the appropriate form. The ATO will then provide an SG voucher to the employer who can then pass this on to the superannuation fund, which then needs to redeem the voucher from the ATO. All of this leads to increased work for the employer, the ATO, the member and the fund. In the meantime, the member is losing interest on the money – and sometimes the SG vouchers are not redeemed.

We consider that it would be much more appropriate if the employer could rectify any underpayment by making a payment (with an interest adjustment) direct to the fund, say within 1 month of becoming aware of any underpayment. The employer could be required to notify the ATO, say on an annual basis, of any underpayments made during the previous year and of their correction. Payment of any penalties could be made at that time.

We suggest that the penalties should be reduced where contribution shortfalls are minor and are corrected within, say, 1 month of discovery by payment to a fund including a late interest component, as proposed above. The penalty in these circumstances could be either eliminated, or limited to the \$50 and \$30 per employee items listed above and would presumably not be tax deductible.

SG Tribunal

We were asked at the hearing for our comments on a tribunal system to investigate members' claims of unpaid contributions.

We agree strongly that there should be an effective avenue for employees to pursue inquiries in regard to their employer meeting its SG requirements. Currently the only avenue is the Tax Office and this is not working well, apparently either due to lack of information or resources.

Therefore unless the Tax Office can provide an effective service, another avenue needs to be put in place. A new "SG Tribunal" is one option. Other options include:

- ◆ widening the jurisdiction of the Superannuation Complaints Tribunal; or
- ◆ including Superannuation Guarantee compliance within the ambit of existing authorities dealing with employees' claims of non-compliance with other basic conditions of employment.

ATO Monitoring of SG Compliance

We were also asked for comment on the 'apparent lack of monitoring by the ATO of an employer's superannuation guarantee performance'.

We do not have any specific or direct information about the ATO's activities in this regard, so are unable to comment.

Overseas Transfers

Another issue raised was the problems associated with superannuation for overseas employees transferring to Australia for a limited period:

- ◆ Even if the employee is sufficiently senior or specialist to qualify for the Visa 457 (or similar) exemption from SG, the Australian employer can't get a deduction for contributions made to the employee's home superannuation fund and in many cases is also subject to fringe benefits tax on those contributions.
- ◆ If the employee doesn't qualify for exemption from SG, the accrued superannuation benefit must remain in an Australian fund until retirement after their preservation age of between 55 and 60, even if it is only a few hundred dollars.

We believe the following should be considered:

- ◆ Allowing deductible and non-FBTable employer contributions to bona-fide overseas superannuation funds.
- ◆ Allowing transfers from Australian funds to bona-fide overseas superannuation funds, subject to appropriate conditions such as the fund is in their country of permanent residence, permanent departure declaration and perhaps a qualifying period of residence back in the home country.
- ◆ Widening of the Visa 457 type SG exemption.
- ◆ A higher minimum benefit subject to preservation on permanent departure overseas.

Page 4

Thank you for giving the IAAust the opportunity to provide these further comments.

Please contact Dr David Knox (03 8603 3919) or me (02 9239 6105) should you wish to discuss further the matters raised in this letter.

Yours sincerely



Jane Ferguson
Director: Public Affairs
Institute of Actuaries of Australia

cc. Dr David Knox, President
Ms Helen Martin, Vice-President