

19 September 2014

Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Email: isabelle.favre@anao.gov.au

Dear Sir/Madam,

Re: 'Promoting Compliance with Superannuation Guarantee Obligations' audit in progress

The Australian Institute of Superannuation Trustees (AIST) is pleased to provide this contribution to the Promoting Compliance with Superannuation Guarantee Obligations audit in progress.

AIST is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

As noted by the Inspector-General of Taxation 2010¹, the Superannuation Guarantee (SG) system generally works well for the majority of Australians. SG compliance is obviously important, given that it involves, in effect, the payment of deferred wages. Since the Inspector-General of Taxation's 2010 report, SuperStream has commenced being implemented. AIST notes that SuperStream will improve the ATO's ability to cross-match data, an important piece of improving SG compliance. To add to this improvement, AIST outlines a number of recommendations in this submission, including the remittance of both SG and salary sacrifice information on BAS reports – to further strengthen the ATO's data set.

While superannuation funds may voluntarily use services such as Industry Funds Credit Control, AIST notes that the ATO ensures that employers are meeting their SG obligations.

Superannuation funds do not have the complete picture of the employee: Members may have

¹ Australian Government, Inspector-General of Taxation, (2010). *Review into the ATO's administration of the Superannuation Guarantee Charge: A report to the Assistant Treasurer*. Australian Government.

more than one superannuation account, multiple employers, and funds are generally not aware of the terms and conditions of any employment contract.

In considering what further steps might improve SG compliance, AIST provides a brief picture of what it believes is important:

1. Objectives for ensuring SG obligations are met

- Compliance: That SG payments are paid on time, and that the right amount has been paid.
- Means of tracking whether SG has been paid correctly: Amounts and timeliness.
- Members are aware of how much has been paid, when, and to where.
- Employers are aware of their obligations.
- Employers are aware of the penalties if they do not meet their obligations.

2. How these objectives might best be met

Responsibility rests with the agency – ATO – which has ‘whole of individuals’ data

AIST recommends that an examination of how SuperStream could be used to help the ATO identify SG non-compliance be undertaken. AIST notes the comments made by the Australian National Audit Office in its description of the audit that the SG scheme largely operates outside of the ATO, with employers making SG contributions directly to employees’ funds or via clearing houses.

As previously mentioned, superannuation funds do not have a complete picture of a member’s superannuation, how many superannuation funds the member has, how many employers the member has, or the employment terms and conditions. The issue then becomes how can the ATO be placed in a better position to utilise the e-commerce improvements which SuperStream is delivering? The implementation of SuperStream is still in its early days, and AIST strongly encourages the ATO and the superannuation industry to consider how future reporting to the ATO may be undertaken.

AIST recommends that

- SG (and salary sacrifice) contribution information – amount, date paid, to which fund – be included on BAS statements as a ‘control’ mechanism for cross checking against other data held by the ATO.
- The ATO and the superannuation industry consider how future reporting to the ATO may be undertaken.

This would improve both the timeliness of the ATO’s ability to identify high risk cases as well as triggering complaints. AIST notes that this recommendation would not overcome any misclassification of ‘employees’ as ‘independent contractors’, an issue raised by the Inspector-General of Taxation in 2010.

Ensuring working Australians are informed as to when, how and where SG is paid

A primary source of verifying employer payments made for employees is payslips. AIST repeats its recommendation made to the recent Treasury Legislative Amendment – Deregulation consultation² – regarding non-inclusion of superannuation information on payslips. Information about how much superannuation, including the name of the fund(s) as well as the type of contribution(s): SG, salary sacrifice, and voluntary after tax contributions - must be included on payslips. This is essential in helping to provide working Australians with information about their pay and payments made on their behalf, including SG and other superannuation monies.

AIST recommends superannuation information – including SG, salary sacrifice, voluntary after tax contributions – must be included on payslips to provide evidence of how an important part of remuneration has been paid and to assist raise awareness about SG compliance.

SG monies should be reported separately to any other monies, e.g. salary sacrifice

AIST notes the comments made by the Inspector-General of Taxation 2010 that it is difficult to quantify the level of SG compliance given that reporting of ‘employer contributions’ includes both mandated SG contributions and salary sacrifice amounts.

AIST recommends that both at system level (within audited accounts) and within employer level (BAS reporting and PAYG certificates), SG and salary sacrifice be reported separately.

3. Communication

AIST notes and strongly supports the work undertaken by the ATO to communicate with employers. Further communications could be developed, depending on the outcomes of the Australian National Audit Office’s audit. For example:

- ATO communications would require review if SG information is included on BAS statements.
- If the ATO uses SuperStream to cross match data, then any non-compliance could also be highlighted on ATO taxation remittances following individual lodgement of taxation returns.

4. Assistance from superannuation funds

While superannuation funds may assist with identification of SG non-compliance, as previously mentioned, superannuation funds do not have all of the data regarding each member.

Nonetheless, superannuation funds may continue to use services such as those offered by Industry Funds Credit Control. Superannuation funds also can reinforce ATO messages such as how to ensure SG compliance, as well as highlighting any penalties for non-compliance.

² Garcia, T. (2014). *Re: Treasury Legislative Amendment – Deregulation*, submission to Treasury [pdf] dated 17 September 2014. Melbourne: Australian Institute of Superannuation Trustees. Available at: <http://tinyurl.com/mhs7lsv> [Accessed 18 Sep. 2014].

5. Meaningful penalties

AIST notes that from 30 June 2012, directors' liability was expanded to make directors of companies personally liable for any unpaid SGC.

If some of the recommendations contained in this submission are implemented, e.g. inclusion of SG information on BAS statements, then consideration would need to be given to a penalty regime for failure to comply.

Page | 4

If you have any further questions regarding this submission, please contact Karen Volpato, Senior Policy Advisor on 0419127496 or at kvolpato@aist.asn.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Garcia', is written over a light blue horizontal line.

Tom Garcia
Chief Executive Officer