

6 November 2014

Manager
Benefits and Regulation Unit
The Treasury
Langton Crescent
Canberra ACT 2600

Email: superannuation@treasury.gov.au

Dear Sir/Madam,

Re: Superannuation Industry (Supervision) Amendment (Pass Through of Employee Details) Regulation 2014

In brief:

AIST supports the regulation of this requirement, and makes suggestions to improve its operation, in particular:

- About 31 March 2015 there should be a mechanism allowing the contributions pass through start date of 1 July 2015 to be confirmed or delayed by up to one year.*
- There should be further, coordinated and consistent practical guidance provided in the explanatory statement and by the ATO.*
- The regulation should provide a safe harbour from prosecution during its first year of operation.*

Background

AIST welcomes the opportunity to comment on the revised draft contribution pass through regulation, noting that over the past two years Treasury has undertaken extensive consultation on both the concept of pass through requirements and earlier iterations of regulation.

The regulation will provide a guarantee to employers that they can send all their super contributions to one location if they wish, while most super funds will meet this requirement through the use of third party providers, such as gateways...

AIST has made previous submissions on the proposed introduction of a superannuation contributions pass through regulation since January 2014, and participated in discussions about the issue over the past two years.

While some of the suggestions made by AIST during the consultations have been adopted (eg, there is now greater consistency between the Data and Payment Standard and the proposed regulation), a number of issues raised by AIST have not been adopted.

While the issues that have not been accepted are on the record, and the rationale for them does not need to be repeated, they include the following topics (using the headings of the Treasury Q&A document):

10. Clearing houses should provide full disclosure of the routing channels they use and services they offer and the associated costs for each service.

12. The regulation should prescribe how gateways must handle the packaging, splitting and routing of data files.

13. The regulation should prescribe how errors are handled.

17. The regulation should be explicit in regards the ability of funds/third parties to charge a fee or cost recover for the provision of the pass-through service.

18. The regulation should prescribe the timeframes in which the pass-through must be acted upon.

19. The regulation should outline the liability of each party in the differing scenarios.

This submission focuses on a small number of points that are now relevant as result of changes to the proposed regulation from previous draft and other changed circumstances. These comments also follow the headings of the Treasury Q&A document.

6. Practical application

While the Consultation Pass Through Summary states that the Explanatory Statement has been substantially amended to better outline the intent of the regulation and what it expected, it is not clear that this is so in all cases, particularly in relation to Channel B solutions.

From the outset, Treasury has expressed the view that: "While employers will need to implement new systems to provide data in the new standard they would benefit from being able to send all data to one destination for routing to the appropriate fund" (8 September 2013).

The regulation appears to compromise this intent in relation to Channel B solutions. That is, the construction of the regulation and the associated commentary in the Explanatory Statement appears to allow a fund to meet the pass through requirement by offering the employer the ability to send their contributions data to two destinations: One destination being for the contributions addressed to the default fund and the other destination being for the contributions addressed to other super funds.

In particular, the explanation of Portal Solutions (Channel B) in the explanatory statement allows default funds to "provide a facility in addition to the portal..." If this is not the intent of the regulation or the Explanatory Statement, it should be corrected. If it is the intent, then this should be clarified and made more explicit.

16. Proposed start date

While Treasury has stated that it sees no need to change the start date of the proposed start date of the regulation from 1 July 2015, AIST suggests that there is merit in having some flexibility in the start date as a contingency.

An earlier pass through proposal from the ATO and Treasury contained a start date of 1 February 2015. AIST and others suggested that this was too early, as it was mid-way through though the transition-in schedule. The proposed date was then moved to 1 July 2015.

At the date was moved, it was understood that the majority of funds would transition-in around 3 November 2014. Since then, the majority of APRA-regulated super funds have notified the ATO that they will be transitioning-in later than 3 November, with several major funds nominating 30 June 2015 as their transition-in date (although they may transition-in earlier).

We also appreciate that, however, that many funds will have transitioned-in by the end of the first quarter 2015, and that there may be high levels of SuperStream transactions by then.

In these circumstances, AIST suggests that the regulation maintain a start date of 1 July 2015 but with Commissioner of Taxation being given the discretion to set a later start date not later than 30 June 2016. Any exercise of this discretion should be made no later than 1 April 2015, with the Commissioner also indicating if the discretion is not to be exercised, in order to provide appropriate time for planning.

If there is significant contribution implementation by 1 April and large volumes of contributions are being successfully transacted, then AIST would support a start date of 1 July. However, if significant issues remain unresolved and transaction volumes are low, then the Commissioner should defer implementation for a reasonable and appropriate period.

This approach is consistent with encouraging early implementation but provides the opportunity to review the start time for pass through requirements at a time when the state of readiness is better known.

Facilitative approach and a safe harbour

There is a concern from some super funds that they may be selected as the pass through default fund by employers for whom their fund has only a very small proportion of the employees as members. That is, they will be burdened with the administrative burden of passing through high volumes of contributions for other super funds and only receiving small volumes of contributions.

This would effectively involve their members cross-subsidising members of another fund. It also has the effect of an administratively efficient fund being penalised for its efficiency.

AIST notes that the operation of the market will probably resolve many of these issues, and may ultimately benefit the relationship of the most efficient funds with employers. Nonetheless, implementation should be closely monitored and the ATO should take a facilitative approach to implementation.

The ATO should explicitly and at an early stage state that they will not be taking any enforcement action against super funds demonstrating a best endeavours approach to implementation during the first 12 months after the start date.

In addition to this, the regulation should also provide a safe harbour against other prosecution for super funds that demonstrate a best endeavours approach to implementation. In the absence of the regulation outlining the liability of each party in the differing scenarios, such a safe harbour is necessary as respective obligations are sorted out after the start date.

AIST

The Australian Institute of Superannuation Trustees 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

If you have any questions about this submission, please contact David Haynes, Executive Manager, Policy and Research on 03 8677 3800 or dhaynes@aist.asn.au

Yours sincerely,

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

Tom Garcia
Chief Executive Officer