The $6 billion-a-year problem

By Tom Garcia | 14/11/2016

In the context of Australia's $2.3 trillion superannuation savings pool, it can be all too easy to get blasé about billion dollar statistics. One big number that deserves a lot more attention than it gets is the estimated $6.2 billion of unpaid super that thousands of, mostly low-paid, workers miss out on each year.

A 2015 research report produced by Tria Partners for Cbus found that employers were failing to make at least $2.6 billion in super 'guarantee' payments a year.

But the problem is likely much bigger than that.

Industry Super Australia, in a May 2016 submission to the Productivity Commission, said its research based on Australian Tax Office (ATO) data indicated the real value of unpaid super is closer to $6.2 billion a year.

To put this $6.2 billion into perspective, it is roughly equivalent to the estimated cost savings to the government from treasurer Scott Morrison's 2016-17 budget package of super tax measures over the next four years.

The budget measures – which mostly impact on a minority of high-income earners and the very wealthy – have been endlessly debated and dissected by journalists, accountants, tax lawyers and super industry groups for the better part of this year. Meanwhile billions in compulsory super guarantee payments – which typically hit low income earners, meaning they are excluded from super altogether – continue to quietly leak out of the system.

Main reasons for non-payment

Tria's report found four main reasons for non-payment of super: employer non-compliance, the cash economy, sham contracting, and insolvency. IFCC notes that the problem is most acute among small businesses and in sectors characterised by higher rates of business churn, such as construction, hospitality and retail.

Industry Fund Services (IFS), the industry's key collector of unpaid super, says the law leaves room for debate as to whether or not the fiduciary duty of super trustees to act in members' best interest means they have a duty to chase any super guarantee payments that are in arrears.

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But when employers fail to make the payments, super funds are in the strongest position to enforce compliance, compared to members or the ATO.

Arrears collection doesn't have to be 'combative'

Fund administrators are the first to know when payments enter arrears situations and can action non-payment before amounts outstanding grow too large or the company moves into receivership.

Some funds are far more active in pursuing arrears collections than others.

Importantly, arrears collection does not have to be a combative process that pits super funds against employers.

IFS found that most errant employers do not deliberately set out to fall behind in paying super. Often it is cash flow pressures, inefficient systems or processes, or lack of knowledge about payment obligations. Many employers are quick to rectify the situation once prompted by a phone call, and repayment plans can ensure that arrears collection does not trigger business closure or job losses.

Another reason why some trustees may be reluctant to pursue unclaimed monies are concerns the costs involved in recovering super will have to be shared across the entire membership, rather than those who benefit from the service. However there are no legal impediments to a trustee charging an arrears collection fee to individual member accounts, provided the fee is allowed under their trust deed, and the fee is properly disclosed.

STP will 'harmonise' tax, super and salaries

New legislation to introduce single touch payroll (STP), due to come into effect from July 2018, is expected to see the ATO take on a much greater compliance role in regards to super payments.

STP will harmonise how and when employers pay tax, super and salaries. Currently many businesses pay wages fortnightly but super quarterly. The ATO will have real-time data on whether or not super has been paid.

The new rules will be mandatory for large and mid-size businesses, but voluntary for micro-employers with five staff or fewer. Still, many small businesses are expected to synchronise the payment of salary and super as payroll software is amended to incorporate STP.

On face value, this new technology could go a long way to solving the unpaid super problem. But much will depend on whether the ATO is adequately resourced to take necessary action on arrears.

Either way it will be at least two years before STP has any real impact, by which time another $12 billion in super could disappear from the system unless more action is taken.

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