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Consultation on the Administration of the Superannuation Guarantee Charge
Inspector-General of Taxation
GPO Box 551
Sydney NSW 2001

Email: sgcreview@igt.gov.au

Dear Sir

Review into the Tax Office's Administration of the Superannuation Guarantee Charge

We refer to the Terms of Reference and Consultation Plan for the Inspector-General of Taxation's review into the Australian Taxation Office's (ATO) administration of the Superannuation Guarantee Charge (SGC) (the **Review**).

The Taxation Institute of Australia (**Taxation Institute**) is pleased to provide this submission for consideration under the Review. The Taxation Institute sees the Review as having two aspects:

- an examination of the ATO's administration of the SGC; and
- identifying and recommending changes that will assist the ATO to improve the early identification of superannuation guarantee (SG) shortfalls, the timely handling of employee complaints and the prompt collection of outstanding SG amounts.

The Taxation Institute considers that the first aspect of the Review will provide valuable guidance as to where change is most required and how, in the current economic climate, change can be achieved in a cost effective manner.

The Taxation Institute's recommendations made for further consideration in this submission include:

- improving education;
- design changes to the SG system to ensure a fairer more easily understood system; and
- building a better understanding of the areas of non-compliance and using that information to take actions to address the areas of non-compliance.

1. SG system – education

The SG system has two major components. These are compulsory contributions by employers and a choice by employees of the superannuation fund to which the contributions are made. The ATO is responsible for the administration of the system and therefore its interactions with both employers and employees are critical and it is important to have regard to the role, expectations and understanding of both employers and employees when considering the administration of the system by the ATO.

Although compulsory contributions have been in place since 1992, commencing with a charge percentage of 3% which progressively increased to a level of 9% for 2002/3 and subsequent years it is likely to be around another 25 years before the SG system reaches maturity where employees will have benefited from contributions at the current rate of 9% during their whole working lives.

Choice of superannuation fund which was introduced on 1 July 2005 enabling most employees to choose the superannuation fund to which their employer's superannuation contributions are made is relatively new. The Taxation Institute believes that there is still a widespread lack of understanding of the SG system by both employers and employees. The lack of understanding relates to how the SG system operates and its impact on future retirement incomes. This makes the ATO's task of administration of the system more difficult.

Therefore, the Taxation Institute recommends further education for both employers and employees to increase employer compliance and employee understanding. The system must be easy for employers to understand and therefore comply with. This can be achieved through education/communications programs to increase community understanding and design changes as suggested below to ensure the system can be easily understood and applied by both employers and employees.

The Taxation Institute considers that there must be a clear communications strategy to educate employees regarding the appropriate manner and forum in which to raise their concerns regarding employer compliance. The Taxation Institute considers that the most immediate and most user friendly measure would be to maintain a telephone line specifically to deal with complaints about contributions not being made by employers and an advertising campaign to assist employees in being able to check whether appropriate contributions have been made for them.

For employers, the choice of superannuation funds makes it imperative that there is well advertised information for employers on how to check that a fund is an appropriate fund to receive SG contributions and that the check is easy to carry out, free and accurate.

The Taxation Institute considers that access to the education and communication materials discussed above is vital to improving compliance with the SG system.

2. SG system – design

The Taxation Institute considers that ensuring that the design of the SG system is as simple as possible will promote greater understanding and compliance. Further, the Taxation Institute believes that there are a number of inconsistencies and anomalies in the SG system design which if addressed could result in a better system. These are discussed below.

Compulsory contributions

A good example of an issue where a design improvement could assist with compliance is the definition of the people for whom compulsory contributions have to be made.

Self employed people and people earning under \$450 per month are currently excluded from the system. The increasingly part time nature of the work force may result in many people having a number of part time positions. These people may be excluded from participation in the SG system purely as a result of the level of income earned from each position. This arguably discredits and complicates the SG system and it is debatable whether requiring SG for such workers imposes any unreasonable extra administrative burden on employers that could not be easily removed.

At the other extreme, it is possible for people with a number of high paying positions to be forced into the situation of breaching the contributions caps and paying the associated excess contributions tax. This is due to the maximum contribution base for SG purposes being defined at the employer level, whereas the contribution caps are defined at the individual level. This is difficult for many to understand or accept and creates inconvenience and penalises those affected.

Accordingly, the Taxation Institute recommends reconsidering the definition of the people for whom compulsory contributions have to be made to make the SG system simpler for employees and employers to understand and apply. This should have a positive impact on compliance.

Superannuation Guarantee Charge

Another design improvement which could increase compliance is in relation to the liability for the Superannuation Guarantee Charge (**SGC**) under the *Superannuation Guarantee (Administration) Act 1992*.

If contributions are not made at or above the minimum level or not made in a timely manner, an employer is liable to the SGC. The SGC comprises the shortfall for the quarter, an administration component and an interest component. Unlike normal superannuation contributions which are tax deductible to an employer, the SGC is not tax deductible to the employer.

The Taxation Institute believes that the SGC, especially the non deductibility of it, is disproportionate to the non-compliance in many cases and the Taxation Institute considers that there would be a positive impact on compliance if the SGC was deductible for voluntary disclosures where the failure to comply with the SG regime did not result from intentional disregard of the law. This would make it more likely that inadvertent errors would be fixed by employers rather than left unattended and in many cases become much larger problems to the detriment of the employer, its employees, the ATO and the standing of the SG system.

3. Addressing areas of Non-Compliance with SG obligations

The Taxation Institute believes that it is essential that the ATO uses all the specific additional funding provided to it for the purpose of improving the enforcement of the SG system to increase the overall level of SG compliance. Further, to the maximum extent possible (without prejudice to its other obligations), the ATO should take all reasonable steps to ensure that other resources at its disposal are also used to improve the effectiveness of the SG system.

The Taxation Institute believes that more information about the levels of non-compliance with the SG system will assist in addressing how compliance can be improved. It would be useful for targeting effective improvement strategies to have a better understanding of the incidence of non-compliance and how the levels of non-compliance are classified as between:

- inadvertent error that may have been avoided with further education;
- inadvertent error due to the complexity of the legislation that further education would be unlikely to eliminate;
- non-compliance due to financial reasons (e.g. there is insufficient cash flow); and
- non-compliance due to reasons other than financial reasons.

Each of these categories needs to be addressed separately and within each category further splitting of cause needs to be done to understand the dominant causes of the non-compliance. With this information it will be possible to build programs for education to remedy the specific problems of understanding and where applicable to design education programs to address particular problems to reduce the level of non-compliance.

It would also be beneficial to identify whether non-compliance arises in relation to particular times or particular groups of employees, e.g. where employees are terminated, there may be a failure to make contributions in respect of terminating payments.

The Taxation Institute considers that further analysis is needed before decisions are made about new ATO programs. In addition to programs to educate employers and employees, the Taxation Institute recommends that consideration is also given to the ATO's internal training to ensure that administration of the SG has an appropriate level of priority within the ATO and that there are sufficient SG rulings and guidelines.

In relation to rulings, the Taxation Institute notes that at present there are only five currently operative rulings dealing with the SGC and only two of those have been issued since 1994. This is surprising given the complexity of the legislation and reported concerns about non-compliance. More rulings and/or other guidance materials should provide the clarity required to assist in improving compliance. The Review will provide much needed valuable information regarding the incidence and causes of non-compliance which the Taxation Institute considers is essential in order to improve the SG system.

The Taxation Institute recommends that the report on the Review should:

- include any recommendations for further education and better communications strategies;
- include recommendations for design changes; and
- identify areas which are best dealt with by the issue of new or updated rulings or guidelines; and include recommendations regarding the publication of such new materials by the ATO.

4. Further information

If you require any further information or assistance in respect of our submission, please contact Joan Roberts on 03 9611 0178 or the Taxation Institute's Senior Tax Counsel, Dr Michael Dirakis, on 02 8223 0011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joan Roberts', with a stylized flourish at the end.

Joan Roberts
President