



Second Commissioner of Taxation

Mr Ali Noroozi
Inspector-General of Taxation
GPO Box 551
SYDNEY ACT 2001

Dear Ali

Review into the ATO's employer obligations compliance activities

Thank you for the opportunity to comment on your final draft of your report on the review into employer obligations compliance activities.

We appreciate your acknowledgement in the report of the sound approaches we have in place to support our workforce and their capability development and to assure good quality outcomes from the work they do. This is helpful in countering claims reported in the media recently of systemic deficiencies in our work in this area, and I think a very positive outcome from the work your office does.

We agree in full or in part with 7 of the recommendations, disagree with 2 of the recommendations, and note that 2 of the recommendations are for Government to consider. Our detailed response to all your recommendations is attached at *Annexure 1*.

I would like to acknowledge the efforts of all involved in undertaking this review. If you require further information on our response, please contact Emma Haines on (08) 8218 9330.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil Olesen'.

Neil Olesen
Second Commissioner
Australian Taxation Office
24 November 2016

Recommendation 2.1

The IGT recommends the ATO:

- (a) clarify the protection provided to those who use and rely on the Employee Contractor Decision tool in good faith, promote the tool and allow it to be used by employees and contractors as well as accompanying the result with links to information outlining their respective rights and obligations; and
- (b) implement and promote a Voluntary Certification System which employers, employees and contractors may use, as soon as possible, to confirm worker status and refer them to information about their respective rights and obligations once their status has been determined.

ATO response

In relation to 2.1(a) – Agree

In relation to 2.1(b) – Disagree

We agree to clarify the protection provided to those who use and rely on the Employee Contractor Decision (ECD) tool, to the extent this is supported from a further analysis of users' needs which we will conduct.

We already actively promote the ECD tool and ran a funded advertising campaign earlier this year to promote the tool and myths about worker status. We will continue with our planned promotional activities.

We will explore the use of the ECD tool by workers. We will undertake the necessary design and consultation work with employees/contractors to assess the relative merits and priority of this suggestion, and schedule for implementation in accordance with the findings of that work.

We are not convinced that the proposed Voluntary Certification System offers advantages over the existing advice system, especially if we can enable the ECD tool to be used by workers. For example, the current private advice service provided by the ATO supports:

- the provision of advice to workers on their status and
- whether or not an individual is carrying on an enterprise.

While binding advice cannot be given to a worker about whether they should be subject to PAYGW or superannuation guarantee (because these obligations are not borne by the worker) we can and do give general advice in these situations.

A voluntary certification system would not overcome the issues identified in the review. A voluntary certification system would still require the parties to set out the facts and details of their arrangement in order for a decision to be made, as with the current private ruling system. A voluntary certification system would also only be able to make a decision based on the facts of the arrangement at the time as does the current advice system.

Recommendation 3.1

The IGT recommends that, in relation to Single Touch Payroll, the ATO:

- (a) apply the learnings from the implementation of SuperStream and, in particular, ensure that there is rigorous testing of third party software with certification being provided to those that meet all requirements;
- (b) seek to reduce employers' reporting requirements by using the information obtained to prefill fields;
- (c) ensure that there are appropriate exemptions at least in the short term whilst exploring the possibility of providing:
 - i) a low or no cost software for qualifying small employers; and
 - ii) an alternative method of electronic access for employers facing technological challenges, through such means as e-kiosks.

ATO response

In relation to 3.1(a) – Agree

In relation to 3.1(b) – Agree

In relation to 3.1(c) i) – Disagree

In relation to 3.1(c) ii) – Disagree

The recommendation implicitly acknowledges the successful work that has been undertaken by the ATO in implementing Superstream. We have been keen to ensure that the lessons learned through the Superstream implementation are taken into account in implementing Single Touch Payroll and for this reason have joined the Superstream and Single Touch Payroll projects under single leadership. Our intent is to continue to ensure the Superstream lessons are taken into account as appropriate, as well as the lessons from other software related implementations such as the new practitioner lodgement service, acknowledging that each implementation has its unique features and challenges.

We agree with the recommendation encouraging us to continue to bring those lessons to bear as appropriate as we continue the design and implementation work, although we would argue that we have already been doing this. We are already in discussions with industry on developing a 'fit for purpose' accreditation model for Single Touch Payroll enabled software.

In terms of reducing employers' reporting requirements, this is already a key part of the design of Single Touch Payroll.

In relation to ensuring appropriate exemptions and low or no cost software for small employers, we note that small businesses currently have no obligation to report under Single Touch Payroll. Part of the current pilot for exploring the potential benefits of small businesses using STP is to also explore what mechanisms could best support their usage. In light of this work and the further consideration required to be given by government about STP and small businesses, we think it is premature to agree to these aspects of your recommendations.

Recommendation 3.2

The IGT recommends that the ATO consider developing a capability for the Small Business Superannuation Clearing House to receive:

- (a) electronic files, such as Microsoft Excel and Apple Numbers; and
- (b) standardised files from commercial payroll software.

ATO response

In relation to 3.2 – Agree

The Small Business Superannuation Clearing House (SBSCH) is currently run on IT systems maintained by the DHS. It is proposed that the SBSCH be redeveloped into ATO operated IT systems, although details of that redevelopment are yet to be settled. When the redevelopment occurs (perhaps in 2018-19) we will consider potential improvements.

Recommendation 3.3

The IGT recommends that the Government consider reviewing the FBT regime with a view to delivering reduction in compliance costs in the short to medium term as well as longer term fundamental reform.

ATO response

Matter for Government

Recommendation 3.4

The IGT recommends that the Government considers expanding the Taxable Payment Reporting System to the engagement of contractors across all industries and incorporating it into Single Touch Payroll once the latter has been successfully developed and fully operational.

ATO response

Matter for Government

Recommendation 4.1

The IGT recommends that the ATO:

- (a) improves its PAYGW and SG risk identification process by analysing the utility of data from third party referrals with a view to maximising the use of sources which yield the best results;
- (b) improves its SG risk identification process by:
 - i) encouraging trustees of APRA-regulated superannuation funds to refer more relevant data; and
 - ii) obtaining SuperStream payment data from superannuation funds for employers not required to use STP to promptly identify those not reporting or paying SG.

ATO response

In relation to 4.1(a) – Agree

In relation to 4.1(b) (i) – Agree

In relation to 4.1(b) (ii) – Disagree

We will explore options, including through APRA, to promote awareness of and channels for APRA regulated funds to report SG compliance matters. This was also addressed in a recent ANAO recommendation.

We recognise that if Single Touch Payroll is not extended to employers with fewer than 20 employees that there will still be limitations in identifying SG risks posed by these employers. However, until a decision is made by the Government about whether to extend Single Touch Payroll to cover these employers, and the design of STP implementation is finalised, we think it is premature to pursue an alternative option to obtaining the superstream data.

Recommendation 4.2

The IGT recommends the ATO seeks further means of ensuring superannuation entitlements are paid promptly including the use of deterrents, such as random audits, to curtail the propagation of non-compliance — compliant employers who undergo such audits should be reimbursed for any additional costs.

ATO response

Disagree

We do not support random audits as a cost effective approach to compliance. As the report acknowledges, we have an active and diverse set of strategies in respect of SG compliance that delivers significant benefits for employees who have not otherwise received their entitlements.

Random audits are an untargeted approach that imposes unnecessary costs and time burdens on compliant taxpayers. Investment in random audits would be at the expense of more effective and beneficial approaches.

STP will provide a new source of data that will further assist our targeted approaches.

The ATO is already investigating the use of educational reminders and prompts to deter non-compliance as part of our SG compliance strategies.

Recommendation 4.3

The IGT recommends the ATO publicly announce its areas of FBT compliance focus for future year(s).

ATO response

Agree

We will include, on our 'Building Confidence' site, material which expressly outlines our FBT compliance focus and priorities for the FBT year.

Further, as part of our commitment to transparency we will continue to provide information on the approaches we are taking and the issues and risks we typically encounter in FBT on our 'What attracts our attention' site, with targeted guidance (including FBT specific webinars), and through industry forums and other public engagement events which reach a range of employers .

Recommendation 4.4

The IGT recommends the ATO supplement the principles contained in its 'Our approach to information gathering' booklet with practical guidance, such as common scenarios in training materials, to assist compliance staff to apply them in the context of an employer obligation audit or review.

ATO response

Agree

We agree with this recommendation and will incorporate the examples provided by the IGT as practical scenarios into existing training material to provide further guidance to staff when undertaking an employer obligation audit or review.

Recommendation 4.5

The IGT recommends the ATO enhance its capability development framework and compliance support tools with respect to employer obligations and Personal Services Income compliance activities by:

- (a) improving the relevant training packages on the employee/contractor distinction;
- (b) ensuring that staff are assessed following completion of relevant training packages;
- (c) monitoring the results of quality assessments over time to identify recurring capability issues with a view to improving training and procedures; and
- (d) improving the documentation in the 'reasons for decision' templates, by requiring an appropriate assessment of the application of the law to the facts of the case.

ATO response

In relation to 4.5(a) – Disagree

In relation to 4.5(b) – Disagree

In relation to 4.5(c) – Disagree

In relation to 4.5(d) – Disagree

We appreciate the IGT's acknowledgement in the draft report (and in discussions) of the sound approaches already in place to support workforce and capability development and to assure quality outcomes. These approaches are generating good quality outcomes in the vast majority of cases as the IGT's draft report highlights.

Training in the employee/contractor distinction is part of training available to ATO staff. Our staff are well trained and supported to use their judgement when documenting reasons for decision and utilise a facts and evidence worksheet for complex cases. Not all staff in employer obligations areas action cases related to the classification status of workers. Therefore, training and capability building in these issues is focused on those staff who will be actioning this type of work.

Although there is no formal assessment at the completion of these training packages, technical advisers and team leaders review the work of their staff and any ongoing learning and development needs are managed through the ATO's personal development system (COMPASS). We do not believe there would be additional value from having a formal assessment process in place.

In terms of monitoring the results of quality to identify recurring capability, the business areas that are responsible for employer obligations and PSI work currently use the SERO coaching system to review cases and identify individual capability needs. In addition to this, the ATO has an enterprise wide approach to individual learning and development. Under the COMPASS system team leaders have regular conversations with each team member about their development and learning needs.

The ATO has made some significant changes in its approach to identified PSI risks that are resulting in far fewer of these cases being escalated to audit. Where a case does escalate to an audit or review process the reasons for decisions do require an application of the law to the facts of the case.

Recommendation 4.6

The IGT recommends the ATO increase employers' awareness of its differentiated approach to non-compliance with SG obligations and assess the utility of this approach by analysing the results obtained from measuring its effectiveness.

ATO response

Agree

We agree with the recommendation. We are currently drafting a Practical Compliance Guideline to outline how we consider an employer's circumstances and how that influences our engagement. This will provide a basis for increasing employers' awareness of our differentiated approach to non-compliance with SG obligations.

We have built a framework and measures of success for evaluating the effectiveness of our new approaches for SG, and will be moving to complete an initial evaluation now that we have had a year of operation of the new approach.

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