The Tax Institute

15 December 2025

Mr Andrew Mills, Acting Chair
The Board of Taxation
Langton Crescent
Parkes ACT 2600

By email: rgbts@treasury.gov.au

CC: Mr Paul Korganow, Secretary and Tax Counsel
The Board of Taxation
Paul.Korganow@treasury.gov.au

Dear Mr Mills

Red Tape Reduction Review

The Tax Institute welcomes the opportunity to make a submission to the Board of Taxation (**the Board**) regarding its consultation on the Red Tape Reduction Review (**the Review**) consultation guide (**Consultation Guide**).

In October 2025, The Tax Institute made a proactive submission to the Board, Tax simplification: Cutting through the red tape (**October 2025 Submission**). The October 2025 Submission outlines ideas for reducing red tape within the tax system which we prepared following discussions with the Board, prior to the announcement of the Review.

Cutting red tape and complexity within the Australian tax system is essential to the government's objectives of improving productivity, strengthening budget sustainability, and improving economic resilience. This Review should serve as a useful tool for assessing current policies and practices, ensuring that they align with the overarching goals of economic growth and stability.

In this submission, in **Appendix A**, we expand on our October 2025 Submission with some further ideas for reducing red tape. The October 2025 Submission is included in **Appendix B**.

In the development of this submission, we have closely consulted with our National Technical Committees to prepare a considered response that represents the views of the broader membership of The Tax Institute. Our comments in this submission should be read together with our October 2025 Submission.

We would be pleased to continue working with the Board to support this Review, and connect the Board with our members to workshop and explore in more details real-life examples and opportunities to make meaningful changes across the system.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact our Tax Counsel, John Storey, at (03) 9603 2003.

Yours faithfully,

Julie Abdalla
Head of Tax & Legal

Tim Sandow
President

APPENDIX A

We have set out below our detailed comments and observations for your consideration.

Issues in the administration of superannuation for entertainers

There exists a significant degree of ambiguity and a widespread lack of understanding concerning the operation of subsection 12(8) of the *Superannuation Guarantee Administration Act 1992* (Cth) (**SGAA**). Section 12 of the SGAA extends for superannuation guarantee purposes the meaning of employee to certain categories of individuals. Subsection 12(8) of the SGAA deems a person who is paid to perform music, entertainment, sport, or similar activities to be an employee of the person liable to make the payment. This classification encompasses not only performers, but also those providing ancillary services linked to these activities, irrespective of whether these individuals would typically be classified as employees or contractors under common law.

Subsection 12(8) of the SGAA is reproduced below:

(8) The following are employees for the purposes of this Act:

a. *a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills is an employee of the person liable to make the payment;*

b. *a person who is paid to provide services in connection with an activity referred to in paragraph (a) is an employee of the person liable to make the payment;*

c. *a person who is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast is an employee of the person liable to make the payment.*

Feedback from our members highlights a prevalent misunderstanding among taxpayers, and the challenges for practitioners in providing advice about superannuation guarantee obligations for payments to performers, presenters, and entertainers, with many unaware or uncertain of their responsibilities in this area. This is becoming increasingly relevant as the 'gig economy' expands, and more organisations engage service providers online, where they involve some degree of creativity, such as social media engagement, advertising and content creation. This means more organisations are engaging individuals in circumstances where it is becoming increasingly unclear whether subsection 12(8) applies.

On 23 October 2025, with input from our National FBT and Employment Taxes Committee and our National Superannuation Technical Committee, The Tax Institute made a proactive submission to the Australian Taxation Office (**ATO**) containing numerous examples of commonplace services where it is unclear whether the provider falls within subsection 12(8), and requesting that the ATO publish further guidance on this issue. A copy of this submission is attached in **Appendix C**.

As one illustration of the ambiguity surrounding this issue, Example 2 of our submission to the ATO considers the scenario where a business hires a balloon artist to entertain at a staff party by creating balloon animals for children. The question arises whether this activity qualifies as a performance that showcases artistic skills and warrants superannuation payments, or whether it is merely a craft that does not involve artistic expression, in which case superannuation would not be applicable. If subsection 12(8) does apply, a business that has engaged the balloon artist will have the burden of complying with superannuation obligations in respect to the performer, even if it is a one-off engagement.

The above, and the further scenarios outlined in our submission to the ATO highlight how unclear compliance obligations and red tape in the tax system can be a drain on productivity and divert business resources from core activities directed to growth.

Our concern is that a measure ostensibly introduced as a benefit to the entertainment industry may in fact dissuade business from engaging performers because of the red tape surrounding compliance, particularly in the context of non-ongoing engagements, and the severity of consequences if the engaging entity gets it wrong.

To address this uncertainty, we recommend that either a legislative amendment be made to clarify the operation of subsection 12(8) of the SGAA, or that the Australian Taxation Office (**ATO**) provides clear guidance on the interpretation of this section, including in circumstances that are relevant to the modern online economy.

Transfers of employees between related entities

When an employee joins a company, they must complete Tax File Number (**TFN**) declarations and superannuation fund nomination forms. This is the case even where employees transition between related companies, usually in circumstances where there is no practical change to their role, remuneration, work duties or work location. For example, when a group of related entities streamlines its structure by reallocating employees to another entity within the group, or during mergers and acquisitions where employees are transferred to a new company as part of an asset sale. The associated administrative burden can become overwhelming, whether for smaller and under-resourced businesses, or for larger businesses with high staff transfer volumes.

Employers may need to distribute countless TFN and superannuation choice forms to verify information already in their HR systems. Current legislation prevents the straightforward transfer of this data to the new employer entity, even in situations where there is no practical change to the employee's position. We also note that the relevant information is already being reported through Single Touch Payroll Phase 2, with all relevant employee data, including TFN declarations and superannuation fund choice forms, maintained by the existing employer and reported to the ATO as required.

We understand that historically, the ATO has granted some administrative leniency regarding these requirements for staff transfers within wholly owned groups. However, feedback from our members indicates that there appears to have been a shift in this approach. The result is unnecessary administrative hurdles, particularly during large-scale group restructures.

To reduce red tape, we recommend implementing a mechanism that enables employers to transfer existing information or allows employees to consent to the sharing of their details with the new group employer. Such a change would not only alleviate unnecessary administrative burdens involved in employee transfers for employers, but also save employees considerable time in recompleting forms.

Client-Agent linking

We receive consistent member feedback that there continues to be a significant lack of support in the client-agent linking process. Feedback from members indicates that when issues arise, the only identified workaround involves taxpayers contacting the ATO directly by email, which results in manual updates by the ATO without notification necessarily being provided to the taxpayer or the agent that the requested change has been made. This lack of, or inconsistent, communication, exacerbated by a cumbersome contact approach, means that tax agents are often unaware when a client nomination has been processed, creating inefficiencies and highlighting the need for improved notification systems, such as updates via OSfA, to inform agents of new nominations.

The Tax Institute considers that there should be more streamlined and efficient methods in place for agents to engage with the ATO as part of the client-agent linking process. This would ensure that there is timely communication and notification of changes for tax agents when client nominations have been processed. Unnecessary time and effort taken to ensure a client has validly engaged an agent is less time and effort that an agent could spend addressing their tax and business needs and adds costs which are generally difficult for the practitioner to recover.

APPENDIX B

The Tax Institute

10 October 2025

Mr Andrew Mills, Acting Chair
The Board of Taxation
Langton Crescent
Parkes ACT 2600

By email: rgbts@treasury.gov.au

CC: Mr Paul Korganow, Secretary and Tax Counsel
The Board of Taxation
Paul.Korganow@treasury.gov.au

Dear Mr Mills,

Tax simplification: Cutting through the red tape

The Tax Institute writes to the Board of Taxation (**the Board**) following our discussions at the meeting of our National Large Business and International Technical Committee on 5 August 2025. During that meeting, the Board requested that we provide some recommendations for how to reduce red tape and the compliance burden in respect to the administration of the taxation and superannuation systems.

We also take this opportunity to thank the Board for the opportunity to participate in its stakeholder event on red tape and compliance burden reduction for small business on 25 September 2025.

We welcome the Government's recent announcement that the Board will conduct a review to identify compliance burdens and red tape in the tax system. The Tax Institute looks forward to contributing to this review and working collaboratively with the Board to identify such burdens and opportunities to alleviate them.

In the development of this submission, we closely consulted with our National Large Business and International Technical Committee, National Superannuation Technical Committee and the Fringe Benefits Tax and Employment Taxes Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

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Considering the government's current focus on increasing productivity, it is timely that the need to reduce red tape and implement some immediate solutions is being considered by the Board. By reducing bureaucratic hurdles and simplifying compliance processes, we can help create an environment that fosters innovation and efficiency. This is crucial particularly for small businesses, that often face disproportionate challenges in navigating complex regulatory frameworks. While the recommendations outlined in this submission are no substitute for comprehensive tax reform, we consider that our proposals can help ease the burdens experienced by taxpayers until a broader tax overhaul is achieved.

In addition, our members consider that cutting red tape, promoting business certainty, reducing compliance costs, deregulation, and simplification should be core objectives for government agencies such as the Australian Taxation Office (**ATO**) and the Treasury. The ATO, in particular, should adopt these as formal objectives to be considered in both administering the law and consulting on new law.

We have divided this submission into four key themes: Large Business and International, Superannuation, Small Businesses, and Fringe Benefits Tax (**FBT**).

Our detailed observations and recommendations are contained in **Appendix A**.

We note that this paper focuses on small improvements and immediate action items to help reduce red tape. There is a need for broader simplification and reform. In this regard The Tax Institute has published, among other materials, the following key products which may be of further assistance to the Board:

- the Case for Change, our 2021 landmark discussion paper, considers the Australian tax system holistically. It identifies the aspects of the system that are performing well, and those that are lacking, proposing a range of options for reform which remain relevant today. The Case for Change aims to inform policy discussions and drive meaningful changes in Australia's tax framework to bolster business growth and economic resilience;
- Incoming Government Brief: June 2025, which, following the federal election on 3 May 2025, details key tax and superannuation measures announced by previous governments that remain unenacted ahead of the commencement of the 48th Parliament, and certain other aspects of the system in dire need of reform;
- our recent submission to the Productivity Commission in response to its consultation on the interim report on creating a more dynamic and resilient economy;
- our earlier submission to the Productivity Commission in response to its consultation on *Pillar 1: Creating a More Dynamic and Resilient Economy*, which outlines the crucial role of the tax system in shaping the Australian business landscape and key changes that can be made to foster investment and productivity growth; and
- our submission to the federal Treasury consultation ahead of the upcoming Economic Reform Roundtable.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact our Tax Counsel, John Storey, at (03) 9603 2003.

Yours faithfully,

Julie Abdalla
Head of Tax & Legal

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APPENDIX A

We have set out below our detailed comments and observations for your consideration.

Large business and international

Large and international businesses play a crucial role in shaping the economy by attracting foreign investment, driving innovation, creating jobs and facilitating trade. In recent years, the corporate and international tax compliance landscape in Australia for global companies has become increasingly complex. These amendments have introduced new challenges and considerations that companies must navigate to ensure compliance with evolving tax obligations across various jurisdictions.

The compliance burden in this sector has been exacerbated by the fact that some laws have been introduced with retrospective effect. Examples include legislation introducing public country-by-country reporting (**Public CbCR**) (*Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024*), and the OECD Pillar Two rules (*Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Act 2024),* which became law on 10 December 2024, both of which apply retrospectively from 1 July 2024 and 1 January 2024, respectively. The majority of the recent changes to the thin capitalisation rules also apply retrospectively from 1 July 2023 (the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023 containing these measures received Royal Assent on 8 April 2024).

Further, a lack of effective consultation regarding such sweeping changes is a barrier to creating a more coherent and business-friendly regulatory environment. For example, the recent changes to the thin capitalisation regime, effective 1 July 2023, have raised concerns regarding their influence on debt-funded investments and the nation's competitive standing in the global market. These changes have fundamentally altered how businesses can claim interest deductions and may influence a significant shift in commercial practices. Our understanding from our members is that some businesses are looking to reduce their reliance on debt to mitigate the complexities and potential rejection of deductions under the new rules. This can have significant commercial implications for the viability of these businesses.

Significant technical gaps in the thin capitalisation legislation remain despite stakeholder feedback provided through consultation. The ATO's thin capitalisation public advice and guidance webpage outlines a high-level summary of the topics raised by stakeholders in consultation as matters that, in their view, would benefit from public advice and guidance. It is clear that legislative amendments and clarity are still needed in some areas. As outlined in our submissions dated 3 November 2023 and 5 January 2024, the legislation requires further amendments to provide certainty to taxpayers and reduce the burden of compliance.

From 1 July 2023, public companies that are required to prepare consolidated financial statements in accordance with accounting standards must include a Consolidated Entity Disclosure Statement (**CEDS**). This includes identifying whether each entity within the consolidated group is classified as an Australian or foreign resident, which can be misclassified given existing ambiguities in this area. We note that the Board in its 2020 Corporate Tax Residency Review – Final report recommended amending the law such that a company incorporated offshore would be treated as an Australian resident for tax purposes only where it has a 'significant economic connection to Australia.

Separately, the number of disclosures as part of the International Dealings Schedule (**IDS**) has increased, and companies are now required to complete even more complex reporting obligations, including for example, hybrid mismatch information disclosures even when exemptions apply. This burden is exacerbated by the duplication of tax disclosures, such as those required for public CbCR and the voluntary tax transparency code (**VTTC**), acknowledging the Board's efforts to streamline VTTC. This complexity extends to corporate tax filings in general, as the return and schedules have grown to approximately 60 pages, according to the latest count.

Further adding to the complexity of the system is the ever-growing list of integrity measures. We have provided below a non-exhaustive list of highly complex integrity measures, including:

- anti-avoidance rules such as the Part IVA general anti-avoidance rules, multinational anti-avoidance law and the diverted profits tax;
- thin capitalisation and debt deduction creation rules;
- franking credit schemes;
- benchmark franking rules; franking account return; franking deficit tax;
- debt/equity rules;
- 'exempting entity' and 'former exempting entity' rules;
- holding period and related payment rules; and
- share capital tainting rules.

We acknowledge and support the need for integrity provisions to preserve Australia's revenue base and ensure a level playing field for taxpayers. However, the complexity of these rules results in increased compliance costs, anomalies, errors and disputes with the ATO.

Finally, as businesses increasingly rely on intangible assets to drive growth and innovation, the complexities surrounding their taxation have become more pronounced. The issue of royalty has garnered significant interest among our members, particularly in light of the recent High Court decision in *Commissioner of Taxation v. Pepsico Inc. and Commissioner of Taxation v. Stokely-Van Camp Inc.* [2025] HCA 30. The fact that Australia's High Court was split four justices to three as to whether the transaction involved a royalty or whether an anti-avoidance provision should apply is indicative of the complexity of Australia's tax laws especially as they relate to valuing and taxing intangibles.

Recommendations

We recommend the following:

- assessing the compliance burden on large business and international taxpayers, and implementing measures to reduce duplication or unnecessary disclosures to ease taxpayer compliance;
- evaluating the effectiveness of existing integrity measures and considering opportunities to streamline them to ease taxpayer compliance;
- addressing the misalignment in deadlines and submission methods (either via tax returns or separate forms) of various notifications and elections, which necessitates harmonisation within income tax rules to improve overall efficiency;

- commencing the post implementation review of the thin capitalisation rules prior to the legislative start date of 1 February 2026 and ending well before the statutory 17-month review period;
- examining the scope, purpose, and benefits of disclosures, such as the IDS particularly concerning controlled foreign corporations (**CFCs**), hybrids, thin capitalisation, and debt deduction creation rules;
- implementing the changes to the corporate tax residency rules announced by the former government on 6 October 2020 and recommended by the Board;
- improving the effectiveness of regulators by streamlining processes, such that regulators adopt a more consistent approach, including in relation to CEDS;
- providing clarity on the status of announced but unenacted measures, and developing a process for ongoing maintenance of such announcements, to ensure greater certainty for taxpayer;
- releasing the Board's final report on the capital gains tax roll-over review and undertaking stakeholder consultation based on the findings; and
- examining the taxation of intangibles due to significant challenges associated with their valuation and taxation.

Superannuation

Australia's superannuation system is highly complex, and some aspects of the system are inefficient. The superannuation rules have been tinkered with in virtually every parliamentary term since the 1980s. This has resulted in the core objectives of the system being unnecessarily overlaid with complex legislative amendments, policy changes, and voluminous provisions, regulations, rulings and legislative instruments.

Superannuation is subject to three separate bodies of legislation – the *Income Tax Assessment Act 1997* (Cth) (**ITAA 199**7), *Superannuation Industry (Supervision) Act 1993* (Cth) (**SISA**) and Superannuation Guarantee (Administration) Act 1992 (Cth) (**SGAA**), (collectively referred to as Acts), making navigation more complex. The legislation includes cross-references between the Acts, which can result in laborious interpretation.

While we anticipate that the SGAA will be reviewed with the implementation of the forthcoming PayDay Super reforms, the SISA is well overdue for review, as it has been over 30 years since it came into force.

Our superannuation system currently has numerous caps and thresholds, some of which are indexed under various methods, including by reference to the Consumer Price Index, Average Weekly Ordinary Time Earnings, or other legislative formulas. This results in unnecessary convolution in an already very complex system.

Notice of intent to claim or vary a deduction for personal superannuation contributions

The current paper-based system for an individual to claim a tax deduction for superannuation contributions, particularly the ATO's Notice of Intent form, is an example of processes that reflect a different era to those that apply today. The current law requires a superannuation fund member to request a deduction for a specific super contribution (section 290-170 of the ITAA 1997), and then have the trustee of the receiving super fund acknowledge it. The ATO form requires the member to request a deduction for a year (rather than for a specific contribution), which complicates the process. The complexities of super fund systems are exacerbated when multiple withdrawals or rollovers occur, leading to challenges in processing valid notices of intent (**NOI**).

Our members consider that the original justification for restricting members from submitting valid notices due to technological limitations is no longer valid, given that the ATO now has comprehensive data from all funds through the Member Account Attribute Service (**MAAS**) or the Member Account Transaction Service (**MATS**). This ongoing restriction is seen as an unnecessary complexity that undermines the principles of portability in superannuation. While some APRA funds have adopted online lodgement and acknowledgment processes, self-managed super funds (**SMSFs**) generally lack this capability, further complicating compliance.

Limited Recourse Borrowing Arrangements

The Treasury Laws Amendment (2018 Superannuation Measures No 1) Act 2019 introduced significant changes that took effect on 1 July 2018 regarding the Total Superannuation Balance (**TSB**) of SMSF members, particularly for those who entered into a Limited Recourse Borrowing Arrangement (**LRBA**) on or after this date. Under the new law, an individual's TSB now encompasses their proportionate share of the outstanding LRBA balance, which is determined by the member's stake in the total superannuation interests linked to the asset under the LRBA. This adjustment can lead to miscalculations, as many taxpayers may struggle to accurately assess the outstanding LRBA amounts. If a member's superannuation interest includes an LRBA, the fund is required to report the outstanding LRBA figure in the SMSF annual return, which may potentially inflate the TSB. Such inflation can adversely affect an individual's eligibility for various superannuation benefits, including the ability to carry-forward concessional contributions and make non-concessional contributions. For instance, if a member's TSB reaches or exceeds the general transfer balance cap (**TBC**) of $2 million by the end of the previous financial year, their non-concessional contributions cap for the current year would be reduced to zero.

The use of debt via an LRBA is a legitimate investment strategy for an SMSF and should not be linked to a member's entitlement. An SMSF manages the investment strategy at the fund level and allocates a proportion of net assets to members. Requiring the debt associated with a specific fund asset to be allocated to a member results in a blurring of the trustee's responsibilities to maintain the fund's investment strategy globally for all fund members.

While the measure was introduced as an integrity measure to avoid 'cap manipulation', a strategy that involves gearing for investment is a higher-risk decision and should only be made on solid investment grounds. If an SMSF makes the decision based primarily to assist in 'cap compression', it could be argued that Part IVA of the ITAA 1997 would apply. Overlapping existing integrity measures across various legislative requirements adds to complexity and results in inefficiencies due to red tape.

Foreign investment tax-related compliance

Reporting requirements add to the compliance burden of superannuation funds. Some superannuation funds may be required to comply with CbCR and file Foreign Hybrid Limited Partnership returns despite having no active foreign-controlled operations. As investment entities without foreign operations, superannuation funds lack controlled entities or permanent establishments abroad, rendering CbC reports irrelevant to foreign tax authorities. Our members are of the view that this leads to a misallocation of resources, as the production of such reports serves limited practical purpose and is merely an exercise in redundant documentation.

Additionally, when a superannuation fund is the sole Australian partner in a Foreign Hybrid Limited Partnership (**FHLP**), it is already required to report its share of partnership income on its tax return. The requirement to file a separate FHLP tax return, which merely replicates the same figures adjusted for ownership percentage, adds unnecessary administrative burden. Furthermore, partnership laws in various foreign jurisdictions may restrict the superannuation fund, as a limited partner, from engaging in management activities, including submitting tax returns on behalf of the partnership. This legal limitation underscores the inefficiency and potential legal complications associated with such reporting obligations.

Pension ceasing where there is a shortfall in minimum pension payments

The Superannuation Industry (Supervision) Regulations 1994 (Cth) (**SIS Regulations**) provide that pension terms must include a minimum payment requirement. However, the Regulations do not mandate that the minimum amount be actually paid in order for the pension to remain valid. While APRA's processes are aligned with the SIS Regulations, the ATO's processes are not. The ATO should view any non-compliance by a superannuation fund regarding pension terms as an issue related to the fund's compliance status, which can be rectified through a catch-up payment, rather than its current approach of cancelling or repudiating the pension.

The significant changes to the laws governing superannuation that commenced from 1 July 2017 have added additional complexity to the system with the introduction of caps and thresholds. The ATO oversees compliance with the various caps which is facilitated by the introduction of additional reporting requirements for superannuation funds. The ATO maintains that a pension is considered to cease in the year when a pension shortfall leads to a fund commuting the pension, necessitating the reporting of this commutation and any subsequent re-commencement to the ATO. This serves no genuine purpose and is simply another example of red tape.

Another challenge is determining pension compliance with the requirement to make minimum pension payments during the year of full commutation. There is often ambiguity in member pension instructions regarding whether withdrawals exceeding the pro rata SIS minimum, made prior to full commutation, are classified as additional pension payments or partial commutations. This confusion is particularly prevalent for members over the age of 60, for whom both types of withdrawals are tax-free. All payments from a pension that exceed the SIS minimum, regardless of whether they are taken as lump sums or additional pension payments, should be considered in fulfilling the SIS minimum requirement.

Partial indexation of the TBC

The partial indexation of TBC in some circumstances adds significant complexity to the superannuation pension rules. The calculation of partial indexation is complex, and the result is that there are thousands of personal TBCs, which greatly complicates the role of tax and financial advisers. Taxpayers and their advisers often require external assistance from a Tax Agent and other sources like MyGov simply to identify their personal TBC. This complex system does not appear to be warranted by any public policy goal. The system would be simplified by subjecting everyone to the same TBC when it is indexed.

Alternatively, the conversion of the TBC to the personal transfer cap in the year of commencement of the first retirement phase income stream could set the level of the person's TBC for life. That is, no partial indexation applies.

Lack of CGT rollover

Division 311 of the ITA 1997 has been repealed. This provision was originally introduced to allow CGT rollover relief, facilitating the migration of members and assets to a MySuper compliant product offering. However, there is no such relief afforded to funds that have to move members and assets out of a non-compliant MySuper product, unless it involves a complete successor fund transfer and the winding up of the entire fund. This creates an arguably unjust and unnecessary obstacle for members seeking to exit underperforming MySuper products, effectively penalising them for their desire to move to better performing options.

Recommendations

We recommend the following:

- reforming and simplifying the superannuation system by rationalising the myriad caps, thresholds, and indexation measures so they are more consistent and simpler;
- allowing superannuation members to submit their NOI directly to the ATO via MyGov, allowing the ATO to assess whether members meet the requirements for claiming deductions. This would streamline the process, reduce the burden on members, and eliminate the need for variations in notices when deductions are denied. Other potential options include:
    - members including their declaration within their personal tax returns. Upon receiving the return, the ATO could notify the superannuation fund, enabling the application of a 15% tax on the member's account; or
    - the ATO could directly charge this tax to the individual during their tax assessment, thereby removing the superannuation fund from the NOI processing entirely. In this scenario, the ATO could issue a release authority to the member, similar to the process for Division 293 tax, should they wish to withdraw funds to cover the tax; or
    - allowing superannuation funds to classify contributions at the time of payment, enhancing the overall efficiency of the system;
- conducting a post-implementation review of the changes to the TSB of SMSF members, particularly in relation to LRBA arrangements, and considering whether eliminating the LRBA from TSB calculations could mitigate errors, prevent unintentional breaches of contribution limits;

- assessing the effectiveness of the reporting requirements of superannuation funds and identifying opportunities to streamline reporting;
- making legislative changes to allow SMSFs the autonomy to select whether to use the proportionate method or segregated method for the calculation of the ECPI;
- harmonising the TBC would aid in reducing the complexity associated with it, and result in a single TBC that applies equally; and
- introducing CGT rollover relief for funds that transition members and assets out of a non-compliant MySuper product;

Small and medium enterprises

Small businesses are the backbone of the Australian economy, making significant contributions to employment and economic development nationwide. They account for a substantial portion of the workforce, providing jobs to millions of Australians and fostering growth in local communities. However, despite their vital contributions, small businesses frequently face challenges that can hinder their potential. One of the most pressing issues is the complexity and cost of the tax regimes they must navigate.

Recommendations

To ease the compliance burden of small businesses, we make the following recommendations:

- making the instant asset write-off (**IAWO**) a permanent feature of Australia's tax system. The IAWO threshold should be increased to $30,000, and business eligibility should be expanded to include businesses with an aggregated annual turnover of less than $50 million;
- increasing the turnover threshold requiring businesses to register for GST (for example, to $150,000 per annum) and indexing the threshold in line with inflation so GST compliance is not a disproportionate impediment to starting or growing a small business;
- simplifying the definition of small business for income tax, GST, capital gains tax (**CGT**) and other laws. For example, for the purposes of small business CGT concessions ($2 million), small business income tax offset ($5 million), research and development tax incentive (**R&DTI**) and GST reporting (both $20 million, but calculated in different ways), income tax concessions (such as the prepayment rules, the simplified depreciation and trading stock rules and the base rate entity rules) ($50 million) and thin capitalisation (less than $2 million of debt deductions); and
- streamlining tax legislation concerning small businesses to facilitate easier compliance and support growth, including, for example, the small business CGT concessions in Division 152 of the ITAA 1997, Division 7A of the *Income Tax Assessment Act 1936* (Cth), the family trust election rules in the trust loss provisions in Schedule 2F to the ITAA 1936; and the personal services income rules in Part 2-42 of the ITAA 1997.

Fringe benefits tax

Fringe Benefits Tax (**FBT**) was introduced as an integrity measure to ensure that tax was paid on non-cash benefits provided to employees in respect of their employment. However, it imposes a disproportionately high compliance cost on businesses, due to the underlying complexity in understanding, calculating, reporting, and paying FBT on relevant benefits.

FBT accounts for less than 1% of Australia's net cash collections. The FBT tax gap is consistently one of the highest tax gaps, highlighting the inefficiency and complexity of the regime. For the 2021–22 income year, the estimated net FBT tax gap increased to 34.2% or $1.882 billion from a net gap of 31.2% in 2019–20.

As recommended by the Henry review (Recommendation 112) and noted in our Case for Change discussion paper, a principle-based approach would ensure that the laws governing the regime are aligned with its policy objectives, and encompass sufficient flexibility to allow for inevitable changes over time.

Until a comprehensive assessment of the FBT regime is undertaken and completed, we recommend the following measures to enhance taxpayer compliance with the existing framework.

Recommendations

We recommend the following:

- reviewing the definition of 'foreign super funds' so that it can be applied more practically for FBT purposes;
- removing the 'maintaining a home' requirement for the Living Away from Home Allowance to better support inbound expatriates and workforce mobility;
- introducing zone-based car parking valuation rules and providing clear taxable values to reduce disputes;
- clarifying the interpretation of 'minor benefits' to provide certainty to taxpayers;
- legislating to resolve ambiguities in the timing of recipient payments and contributions;
- reviewing the onerous nature of FBT return lodgement timing in general, and exploring available options for simplification; and
- harmonising the definition of 'employee' and 'employer' across employment taxes to reduce the cost of duplicative requirements and to improve consistency.

APPENDIX C

The Tax Institute

13 October 2025

Ms Kirsten Fish
Second Commissioner
Law Design & Practice
Australian Taxation Office

By email: Kirsten.Fish@ato.gov.au

Dear Kirsten,

Tax administration issues regarding the superannuation guarantee charge and performers and entertainers

The Tax Institute writes to the Australian Taxation Office (**ATO**) to highlight some key areas of concern regarding the administration of the superannuation guarantee charge as it relates to the engagement of performers, entertainers and other service providers. We consider that the ongoing needs of taxpayers and their advisers in this area would greatly benefit from ATO guidance and support.

The concerns raised in our submission are based on feedback from our National Fringe Benefits Tax and Employment Taxes Technical Committee, with input from our National Superannuation Technical Committee. These Committees include legal professionals, tax agents, and other practitioners who manage these issues for their clients and engage with the ATO on their clients' behalf.

There is considerable uncertainty and a general lack of awareness regarding the operation of subsection 12(8) of the *Superannuation Guarantee Administration Act* 1992 (Cth) (**SGAA**). Our overarching recommendation is that the ATO provide guidance to help clarify the operation of this provision in some practical and commonplace scenarios. Our detailed submission is contained in **Appendix A**.

Our submission is intended to be a starting point for further discussion and consultation. We look forward to working with the ATO on the matters outlined in our submission. To arrange a workshop or to discuss any aspect of our submission, please contact our Tax Counsel, John Storey, on (03) 9603 2003.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system

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for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

Yours faithfully,

Julie Abdalla
Head of Tax & Legal

Tim Sandow
President

APPENDIX A

We have set out below for your consideration, our detailed comments and observations related to areas that we consider would benefit from further guidance from the ATO.

Superannuation guarantee for performers and presenters

The SGAA outlines specific categories of individuals who are considered to be employees for superannuation purposes, particularly in the context of various performance and service-related activities.

Subsection 12(8) of the SGAA deems individuals engaged in music, entertainment, sports and related services to be employees of the entity making the payment. This includes not only performers, but also those providing ancillary services related to these activities. This extended definition applies regardless of whether these individuals would otherwise be considered employees or contractors at law.

Subsection 12(8) of the SGAA is reproduced below:

> *(8) The following are employees for the purposes of this Act:*
>
> *(a) a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills is an employee of the person liable to make the payment;*
>
> *(b) a person who is paid to provide services in connection with an activity referred to in paragraph (a) is an employee of the person liable to make the payment;*
>
> *(c) a person who is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast is an employee of the person liable to make the payment.*

Feedback from our members indicates that there is a lack of understanding among taxpayers regarding the application of the superannuation guarantee to payments made to performers and presenters. Many taxpayers are unaware of their obligations in this area, which is becoming increasingly relevant due to the expanding 'gig economy' and greater use of online services which mean more organisations are engaging individuals in circumstances where subsection 12(8) may potentially apply.

Recommendation

Set out below are eleven examples that illustrate the difficulty that tax advisers and their clients encounter with respect to the operation of subsection 12(8) of the SGAA, even in very simple and common scenarios. Clear guidance from the ATO is necessary regarding this issue and its operation in practical scenarios, particularly considering the growing incidence of these types of engagements.

In all the below examples, it should be assumed that the person being engaged is a natural person, rather than, a company, trust or other entity, and that superannuation is not otherwise payable under one of the other categories set out in section 12 of the SGAA.

Example 1: Social media influencer

Part A: A retailer pays an individual with a social media presence to promote their product through a series of social media posts.

Part B: The social media influencer pays an individual to create the posts that they can share.

Potential answers

Part A:

Recording the social media posts is either:

- a form of performance, the promotional activity being the exercise of artistic or other personal skills. Or, the social media post could be considered the making of a film or radio broadcast.

If so, this would cause the payments to be subject to superannuation.

- Alternatively, there is no performance involving the exercise of relevant skills – rather, the value is in the person's fame, and fame is not a skill as such. Further, posting on social media does not involve making a 'film' within the ordinary meaning of the term nor is the social media platform considered 'radio'.

This would mean that the payments would not be subject to superannuation.

Part B:

As for Part A for the social influencer.

For the additional person, similar to arguments raised regarding Part A, their services could constitute the making of a film and/or radio broadcast, but also could be services provided 'in connection with' the 'performance', if it is indeed considered to be a 'performance'.

The payments may or may not be subject to superannuation accordingly.

Example 2: Entertainer

A business hires an individual to attend a party for staff and their families, where they will create balloon animals and distribute them to the children.

Potential answers

The balloon artist is performing an act of entertainment that involves the exercise of their artistic skills, which may be subject to superannuation.

Alternatively, the making of balloon animals is not considered a performance or presentation as such, and/or it is not considered to involve the use of artistic skills or other relevant skills and is therefore not subject to superannuation.

Example 3: Exercise consultant

A business hires an individual instructor to conduct a Zumba dance class at its work premises for its employees. The class primarily aims to teach participants how to perform their own Zumba workouts at home.

Potential answers

The instructor could be performing and/or participating in the presentation of a dance or sport involving their physical skills, and therefore fees charged by the individual should be subject to superannuation guarantee contributions.

Alternatively, the instructor is not presenting or performing but rather is acting as a teacher. This assumes, Zumba is not a dance or a sport for these purposes.

Example 4: Continuing professional development consultant

A business hires an individual consultant to present continuing professional development courses to its employees. These are delivered both in person and virtually.

Potential answers

The consultant is presenting a display of technical knowledge, which involves the exercise of intellectual skills.

Separately, the consultant is making a film or radio broadcast to the extent that the session is shared virtually.

Each of the above, on its own, would make the payments subject to superannuation.

Alternatively, the consultant is not presenting a display as such, and the sharing of information virtually does not constitute the making of a film or radio broadcast, in which case it would not be subject to superannuation.

Example 5: Wellbeing consultant

A business hires an individual consultant to conduct a meditation class at its work premises for its employees.

Potential answers

The consultant is performing and/or presenting the meditation class, which is an activity similar to a sport, or a display that involves the exercise of physical and/or other personal skills, and is therefore subject to superannuation.

Alternatively, conducting a meditation class is not a performance or presentation as such; rather, it is guiding participants in an activity. In addition, the activity is neither a sport nor a display, and is therefore not subject to superannuation.

Example 6: Composer

An orchestral company engages a composer to create an orchestral score. The project includes composing and writing the score, as well as attending rehearsals and providing feedback to the musicians.

Potential answers

The composer provides services in connection with the performance of music, including the writing of the score and/or the provision of feedback at rehearsals, as both are necessary before the orchestral score can be performed. In which case it would be subject to superannuation.

Alternatively, the writing of a musical score occurs prior to any performance that may or may not follow, so it is not a service in connection with the performance of music. Rehearsals do not constitute a performance, so the provision of feedback at rehearsals is also prior to any performance of the music. These actions are therefore not ‘in connection with’ the ultimate performance and not subject to superannuation.

Example 7: Lighting technician

A lighting technician is engaged to support a particular theatre production. The project includes designing the lighting requirements, conducting testing during rehearsals and operating the lighting at the performances.

Potential answers

All the services provided by the technician are necessary for the theatre production to proceed and are therefore 'in connection' with that activity, which is the performance of a play and/or music, and therefore subject to superannuation.

Alternatively, the design and testing are not considered to be 'in connection' with the performance, because they are completed before any performance actually commences, so there should be no superannuation guarantee on those components. Whereas the operation of the lighting at the performances is in connection with the performance, so that component may be subject to superannuation.

Further alternative – if the services cannot be separated and are invoiced as a single item, the predominant service informs whether superannuation applies or not – this might be considered the operation of lighting at the performance, which may be subject to superannuation, or the preparation work (perhaps because that is likely to take more time) – which would not be 'in connection' with the performance and therefore not subject to superannuation.

Example 8: Guest speaker

An individual is invited to present at a conference about their learnings from past experiences. They bring along a supply of books they wrote to autograph and sell to attendees.

Potential answers

The presentation is an activity similar to that of entertainment or a display and involves the presenter exercising intellectual and other personal skills, which may be subject to superannuation.

Alternatively, the presentation of past experiences, although it might be entertaining, is not provided as entertainment or a display as such, but rather, for learning, so it is not subject to superannuation.

Example 9: Videographer

Part A: A couple engage a videographer to film their wedding.

Part B: A business engages a videographer to film a staff event.

Part C: A business engages a videographer to film a promotional video.

Potential answers

Parts A and B

The videographer is being paid to make a film in which case superannuation applies.

Alternatively, a video recording of any of these events does not constitute a 'film' as such as it is entirely for private use, in which case no superannuation applies.

Part C

As above for Parts A and B, but in addition, the videographer is performing services in connection with a ‘promotional activity’, therefore making it subject to superannuation.

Example 10: Security

A business engages personal security for its entertainment event.

Potential answers

Security is an important part of an entertainment event; hence, the security personnel may be said to be engaged to participate in the performance or presentation of the entertainment. Their participation is necessary for the safe running of the event. Failing that, they are engaged in connection with the entertainment activity, in which case superannuation applies.

Alternatively, security personnel do not actually perform or present, so superannuation does not apply under this category. Further, security is a completely separate activity from the performance or presentation, and the occurrence of the performance is not conditional on security, and is therefore not provided in connection with the performance or presentation, in which case superannuation does not apply.

Example 11: Promotional event

A person is hired to hand out samples at a promotional event.

Potential answers

Handing out pamphlets constitutes participating in the presentation of a promotional activity. Even if this were not the case, the handing out of the pamphlets could be seen to be in connection with the performance of the promotional activity. In either case, superannuation may apply.

Alternatively, simply handing out pamphlets does not constitute a performance or presentation. Further, it is too far removed from an activity to be in connection with any performance or presentation that is occurring. In which case, superannuation would not apply.