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Ms Neena Pai
First Assistant Secretary
Superannuation Access and Compliance Unit
Retirement Income and Superannuation Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: paydaysuper@treasury.gov.au

Dear Ms Pai,

Payday Super – Exposure Draft

As the representative of over 160 large corporates that operate across 22 industries, the Corporate Tax Association (**CTA**) welcomes the opportunity to make a submission in relation to the Payday Super exposure draft bills and regulations.

CTA members are some of the largest employers in Australia, with employees numbering into the thousands. They have staff employed on a variety of bases, including full-time, permanent part-time, casual and contractors. They also have employees required to work interstate as well as employees coming into Australia and being relocated overseas at various times. As such, the proposed Payday Super amendments have significant practical implications for CTA members, including:

- Timing constraints which could be alleviated by allowing employers 7 business days to make superannuation contributions,
- Factoring in the additional layers of administration that apply to paying contractors, and
- Other matters that require clarification.

Further information about the above is provided in the Appendix to this letter.

Should you have any questions or if you wish to discuss this matter, please do not hesitate to contact me on 0408 028 196.

Yours sincerely,

Stephanie Caredes
Senior Tax & Policy Adviser

Appendix - Issues

1. Timing

Item 12 in Schedule # Part 1 Main amendments to the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGA Act**) inserts a new term, 'late period' into subsection 6(1) of the SGA Act. Subparagraph (a) defines the 'late period' as 'starting on the eighth day after the QE day'. In practical terms, this means superannuation contributions would need to be made by the 7th day after a QE day. For example, if a QE day arises on a Tuesday, the superannuation contributions would need to be made by the following Tuesday, with the late period beginning on the following Wednesday.

We understand that the word 'day' takes on its ordinary meaning to refer to a day of the week (i.e. a calendar day) as it is not specified to refer to a 'business day' only.

The 'QE day' refers to the day on which 'qualifying earnings' have been paid which include ordinary time earnings, commissions and other such payments as defined in draft subsection 10A(1) of the SGA Act. Generally, such payments would be made to an employee during an employer's periodic pay run (which may be monthly or every two weeks for a large corporate employer, noting these payments usually cover a period in arrears and a period in advance).

Given the significant rise in the frequency of the payment of superannuation contributions based on a QE day rather than the end of a quarter, employers will be making superannuation contributions much more frequently than under the current requirements where they make contributions quarterly.

There is a concern that in the 7 calendar day period in which superannuation contributions gives only 5 business days for an employer to make superannuation contributions which will be reduced to potentially 4 or 3 days when public holidays fall during that period, particularly during the Easter and Christmas periods.

Super funds will have 3 business days to refund contributions that could not be allocated due to mismatched information being provided to an employer. Depending on when the employer made the contribution, it may only have a day to resolve the issue.

In this regard, we suggest that the late period begin on the eighth 'business day' rather than the eighth calendar day after the QE day. Having additional business days in the intervening period between the QE day and the late period beginning will give employers more time to manage a number of common scenarios:

- to account for the time it takes for a typical large corporate employer's internal payments process to run (e.g. 3 days);

- to account for the time it takes for superannuation clearing houses to process payments (this is typically 3 days). Currently, employers have 28 days after the end of the quarter to make any top-up payments (see further the discussion below in relation to superannuation clearing houses)

- to account for the time it takes for employers to deal with returned superannuation contributions where the superannuation fund has rejected the contribution (because for example, it has closed or no longer accepts contributions);

- in the event that a system error occurs that requires an adjustment or correction to a superannuation contribution amount to be made prior to payment;

- to manage situations when existing employees move super funds during their employment;

- to alleviate the time constraints in periods when public holidays arise; and

- to account for the circumstances where systems are not set up to capture qualifying earnings paid to contractors and a manual process is required to ensure the correct amount is included in the payroll system (see further the discussion below in relation to contractors).

2. Contractors

The onboarding of contractors and employees is usually done by different areas of the business and may involve using different onboarding systems. Generally, contractors cannot be paid through an employer's payroll system.

Consequently, there are practical implications with applying Payday Super to contractors who fall under the extended definition of 'employee' in section 12 of the SGA Act.

While payments to persons that meet the ordinary definition of 'employee' are run only through an employer's payroll system, payments to contractors are first run through an employer's Accounts Payable system as the contractor usually provides an invoice for the services they have rendered. This invoice may purely be for services rendered or may be for services rendered plus materials provided. This will not be known until the invoice is more closely examined. Subsequently, information for the purpose of paying superannuation contributions needs to be extracted from that invoice before the contractor is paid. There may not be an automated system set up to capture the qualifying earnings portion of the invoice.

Typically, a contractor is paid soon after they issue an invoice rather than being included at the same time as an ordinary pay run (which is usually monthly or every two weeks for a large corporate employer). This is particularly in the case where the contractor operates as a sole trader and is brought in for a specific job or event that may last only a short period of time (e.g. a day or period of hours) rather than being contracted to work on an ongoing basis.

As such, there is an additional layer of administration before a contractor is paid. We query whether it is appropriate for the payment of superannuation contributions for contractors who fall under the extended definition of 'employee' should be made under the new Payday Super regime or should continue as they are under the existing scheme.

3. Other matters

a) Removal of references to 'clearing house'

A number of amendments are being made to remove references to the concept of a 'clearing house' from the SGA Act and the *Retirement Savings Accounts Act 1997* (Cth). We would appreciate it if it is confirmed that all clearing houses will no longer be a feature in the superannuation system.

Paragraphs 1.136 and 1.137 of the Explanatory Memorandum refer to this. However, as the only clearing house references in the Explanatory Memorandum is the Small Business Superannuation Clearing House operated by the ATO (which is being retired from 1 July 2026), it is unclear whether all existing clearing houses will have a continuing role to play once Payday Super starts or whether no clearing houses, including the Small Business Superannuation Clearing House operated by the ATO, have a role to play in Payday Super. We seek clarification of this.

In the event clearing houses do have a role to play in Payday Super, a question arises whether they will be ready to receive superannuation payments in the requisite amount of time as it does not appear that the draft bills or regulations impose any time limits on clearing houses. Where superannuation is paid through a clearing house, there isn't always proof that the superannuation has been paid within the relevant time limit. Under current circumstances, superannuation may be paid to the clearing house monthly knowing that the time period to meet is quarterly which leaves time for the clearing house to forward the payment to the super fund by the relevant time. There is concern that with the much shorter timeframe for superannuation contributions to be paid on time (ie by the end of 7 days after the QE day), there is uncertainty whether the contribution will be paid on time to the super fund where a clearing house is involved in the process.

b) Annualised contributions cap

Current payroll systems are typically set up such that when the quarterly contributions cap is reached, the system will automatically reduce the superannuation contribution amount for the last pay period/s in the quarter.

There is a potential issue for large corporate employers who don't pay superannuation contributions based on ordinary time earnings but who pay under a different methodology, which may also differ from the new concept of 'qualifying earnings' (see draft section 10A in the 'Core Provisions' exposure draft). Employers may then be required to reconcile the amount of superannuation contributions paid per employee more frequently to the annual threshold (perhaps at the time of each pay run) which could lead to an overpayment of superannuation contributions early in the tax year. This creates and administration burden on employers as it will be difficult to manage any reduction in / no payment of the Superannuation Guarantee later in the year due to earlier overpayment. Employers will be required to track this vigilantly.

This is also an issue where an employee is a high earner, that they could reach the contributions cap early in the year and future superannuation contributions would be nil. Currently, there is a form that high-earning employees with multiple employers can lodge to opt out[1] of receiving Superannuation Guarantee contributions from a particular new employer.

[1] Super guarantee opt out for high-income earners with multiple employers | Australian Taxation Office

Draft sections 17B and 17C of the 'Core Provisions' exposure draft enables an employee to obtain an exemption certificate from the Commissioner in relation to a specified employer for a specified period. We note that sections 16 to 29 of the SGA Act are being repealed which include the provisions related to the issuance of an 'employer shortfall exemption certificate' in current sections 19AA to 19AC.

Please confirm that the exemption certificate to be issued under draft sections 17B and 17C will effectively operate in the same way as the existing 'employer shortfall exemption certificate' allowing employees to 'opt out' of receiving superannuation contributions from certain employers. This will mean that employers can continue to maintain existing administrative practices regarding managing their superannuation compliance obligations with respect to employees that obtain an exemption certificate, and no additional administrative burden is placed on employers.

c) **New Employees**

Under the new Payday Super regime, employers are given 21 days after the first QE day they pay a new employee to start making superannuation contributions for that employee.

An employee has 28 days to provide their Tax File Number details to their employer[2], otherwise the employer must withhold tax at the highest marginal rate (plus the Medicare levy). An employer must offer an employee a choice of super fund form[3] within 28 days of their start date per section 32N of the SGA Act (this does not appear to be changing under the new Payday Super regime).

An issue may arise where the 21 day period to make a superannuation contribution on time for a new employee runs out before the 28 day periods in which the new employee is required to provide their Tax File Number information and complete a choice of super fund form. We query why these time periods do not align and how an employer should manage this misalignment.

We do note that under the new Payday Super regime, an employer will be able to request the Commissioner to identify any stapled fund for a new employee prior to the employee starting their employment with the new employer (refer to the 'Employee Onboarding Reforms' exposure draft) so there should not be a timing issue here.

d) **Overpayments of superannuation**

Currently, the ability to recover overpaid funds to a superannuation fund is almost non-existent, and in some instances (e.g. termination of the employee) can result in a significant cost to the employer. There is potential for a rise in overpayments by employers to occur with superannuation payments being made more frequently in the new system due to superannuation contributions being made in line with the periodical payments of qualifying earnings that also cover advance periods. Under the current system (which is quarterly), there is more time to manage this issue and avoid making overpayments. Please advise if consideration is being given to better facilitate the recovery of overpaid superannuation contributions by employers.

[2] https://www.ato.gov.au/businesses-and-organisations/hiring-and-paying-your-workers/payg-withholding/payments-you-need-to-withhold-from/payments-to-employees/tax-file-number-and-withholding-declarations
[3] https://www.ato.gov.au/businesses-and-organisations/super-for-employers/setting-up-super-for-your-business/offer-employees-a-choice-of-super-fund

e) **Defined Benefit Scheme**

It is understood that the draft provisions in the Payday Super regime are not intended to change any existing arrangements in relation to defined benefit schemes. However, it is unclear how often an employer needs to obtain the certificate from the actuary required in relation to a defined benefit scheme. We would appreciate clarification of this.