



DIRECTOR CRACKDOWN:

New measures to enforce superannuation guarantee compliance

The message continues to come in loud and clear. The Government has officially had it with directors ripping off employees and government agencies.

Illegal phoenix activity has been a hot topic over the past 12 months and as previously discussed in our articles “Did you know the ATO will soon be able to report tax debt to credit agencies” and “Know Your Advisor”, a comprehensive package of reforms is being implemented to combat illegal phoenix activity and fight tax evasion, including Director Identification Numbers (DINs) and other measures to dissuade those engaging (and promoting) phoenix activity.

Further to these reforms, the Government has released a draft Superannuation Guarantee Compliance Bill aimed at cracking down on Superannuation Guarantee underpayment. Employers failure to pay superannuation, sees employees missing out on almost \$2.85 billion a year in superannuation (as estimated by the ATO in 2014-2015).

The Superannuation Guarantee Compliance Bill

Intended to improve compliance and ensure employees receive at least the minimum 9.5% superannuation, under the proposal, employers who fail to follow the ATO’s direction to pay superannuation entitlements to their employees will be subject to court-ordered financial penalties and directors could face up to 12 months imprisonment.

Additionally, directors who do not pay superannuation will be flagged using their DIN, assisting the ATO in identifying their misconduct.



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The bill proposes:

- Expansion of real time reporting of employer liabilities to all employees from mid-2018;
- Mandatory Single Touch Payroll for all employers from mid-2019 to better align payroll systems with regular reporting obligations; and
- Empowering the ATO Commissioner to issue written directions to employers, if the Commissioner reasonably believes an employer has failed to comply with a superannuation obligation.

These new laws come from the recommendations of the Superannuation Guarantee Cross-Agency Working Group, a backflip from the Government's 2015 plans to reduce penalties for employers who failed to remit superannuation. The recommendation, also spurred legislation introduced last year, intended to close the loophole used by employers attempting to short-change their staff, using lower gross salaries to calculate super payable due to salary sacrifice arrangements utilised by employees. This practice stemmed from a failure of the Superannuation Act to make a distinction between a contribution from an employee utilising a salary sacrificing arrangement and a contribution by the employer. The result was employers were counting the salary sacrificed amount as part of their own obligation to remit or calculating superannuation on the post salary sacrificed wage amount.

While the reforms put the squeeze on companies and their directors to comply, they are also viewed as beneficial for the integrity of the superannuation system and employees. The increased visibility shifts the responsibility of monitoring superannuation guarantee compliance from the individuals to the ATO and adds measures to hold directors and employers accountable for short changing their employees' retirement savings.

What does this mean for Business?

No more loopholes. Employers have no choice but to be report and remit, at minimum, 9.5% superannuation on ordinary time earnings, irrespective of salary sacrificing arrangements. The ATO and Fair Work Ombudsman will be monitoring employers more closely to ensure this occurs and they now have greater powers to act if a business fails to comply.

It is unclear whether the financial penalties imposed on companies will extend to the directors of those companies, or whether directors will be able to avoid personal liability of superannuation by reporting on time. Further, it is clear under the bill that directors may be jailed if prosecuted for being delinquent.

Further, the liabilities of the company will follow directors as the DINs are rolled out.

How can FTI Consulting assist?

If you believe your client may be experiencing difficulty in meeting taxation, superannuation and other obligations, we can meet with you both to discuss the options which may be available to work through the disruption.

FTI Consulting can assist your clients by providing services including financial management and performance improvement solutions, restructuring, insolvency advice and appointments, and interim management. By working through the issues they face we can get your clients back on track and ensure they have the funds and know how to keep on top of their obligations in the future.

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