client alert | explanatory memorandum

June 2023

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 26 May 2023.

Federal Budget update

Personal tax rates and offsets for 2023–2024 and beyond

Amid the cost-of-living crunch and global uncertainty, Treasurer Jim Chalmers has handed down his second Budget. A Budget surplus of $4.2 billion is forecast in 2022–2023, but an underlying cash deficit of $13.9 billion is expected in 2023–2024 and a $35.1 billion deficit for 2024–2025.

With no announced changes in the Federal Budget to personal tax rates and offsets for the 2023–2024 income year and beyond, now is the time to do some tax planning for the current and future years. For the 2022–2023 and 2023–2024 income years, the rates and income thresholds that have applied since the 2021–2022 income year will continue to apply. However, some individuals may find themselves paying more tax for the 2022–2023 income year due to the end of the low and middle income tax offset (LMITO).

Despite widespread calls to scrap the already legislated Stage 3 tax cuts, the Federal Government did not announce any changes in the recent Budget, which means the tax cuts are still set to commence from 1 July 2024 (ie the 2024–2025 income year). Additionally, no changes were announced in the Budget to the current personal tax rates, meaning that the rates and income thresholds that have applied since the 2021–2022 income year will continue to apply.

The already legislated Stage 3 tax cuts will reduce the 32.5% marginal tax rate to 30%, leading to one big tax bracket between $45,000 and $200,000, along with the abolishment of the 37% tax bracket from the 2024–2025 income year. The original aim of these changes (under the previous government) was to align the middle tax bracket of the personal income tax system with corporate tax rates. In detail, the brackets and rates are as follows:

- $0 to $18,200: nil tax payable;
- $18,201 to $45,000: nil + 19% of excess over $18,200;
- $45,001 to $200,000: $5,092 + 30% of excess over $45,000; and
- $200,001+: $51,592 + 45% of excess over $200,000.

However, some individuals may find themselves paying more tax for the 2022–2023 income year due to the end of the LMITO. The LMITO applied to individuals with taxable income of less than $126,000. For the 2021–2022 income year, those earning a taxable income of $90,000 received an offset of $1,500 which reduced by 3 cents for every dollar of income above $90,000, tapering off at an income of $126,000.

For the 2022–2023 income year and onwards, only the low income tax offset (LITO) will apply. The maximum amount of the offset is $700 and will apply to individuals with taxable incomes of less than $37,500. Those earning between $37,501 and $45,000 will get $700 minus 5 cents for every dollar above $37,500. Individuals with taxable incomes between $45,001 and $66,667 will get $325 minus 1.5 cents for every dollar above $45,000. Taxpayers earning more than $66,667 are not eligible for the LITO.

Example

Jerry earns a taxable income of $95,000 for the 2022–2023 income year. He is not eligible for the LITO as his taxable income is too high, and the LMITO no longer applies. His amount of tax payable for the 2022–2023 income year based on the current tax rates is $21,342. Previously, in the 2021–2022 income year when the LMITO applied, Jerry's tax payable of $21,342 would have been reduced by $1,350 to $19,992.

If Jerry is still earning the same taxable income of $95,000 in the 2024–2025 income year due to wage stagnation, based on the legislated Stage 3 tax cut rates his tax payable would be $20,092, a projected reduction of $1,250 from his 2022–2023 and 2023–2024 tax payable.

It should also be noted that the Stage 3 tax cuts not only apply to Australian residents, but also to foreign residents and working holiday makers from the 2024–2025 income year. As legislated from 1 July 2024, foreign residents will only pay 30% on taxable income of up to $200,000. Currently, the lowest rate for

foreign residents is 32.5% on taxable income of up to $120,000. For working holiday makers, from 1 July 2024 the 32.5% marginal tax rate will be cut to 30% for one big tax bracket between $45,000 and $200,000 of income, as per the rates for Australian residents.

What's in the Budget for small businesses

For small businesses, the government has proposed to temporarily increase the instant asset write-off threshold from 1 July 2023 to 30 June 2024. In previous years, the temporary full expensing effectively replaced the instant asset write-off regime and applied for assets held/first used/installed ready for use between 6 October 2020 to 30 June 2023. This allowed eligible businesses to immediately deduct the business portion of an asset's cost with no general limit, although specific cost limits on certain assets, such as cars, applied.

With the expiration of the legislated temporary full expensing, eligible small businesses with an aggregated annual turnover of less than $10 million will be able to immediately deduct the full cost of eligible assets costing less than $20,000 that are first used or installed ready for use between 1 July 2023 and 30 June 2024. The $20,000 limit will apply on a per asset basis, so small businesses are able to instantly write-off multiple assets.

Assets valued at $20,000 or more (which cannot be immediately deducted) can continue to be placed into the small business simplified depreciation pool and depreciated at 15% in the first income year and 30% each income year thereafter. In addition, the "lock-out" rule that prevents small businesses from re-entering the simplified depreciation regime for five years if they opt-out will continue to be suspended until 30 June 2024.

The government has also announced a lodgment penalty amnesty program for small businesses (with an aggregate turnover of less than $10 million). The amnesty will remit failure-to-lodge (FTL) penalties for outstanding tax statements lodged in the period from 1 June 2023 to 31 December 2023 that had original due dates between 1 December 2019 to 29 February 2022.

Currently, the FTL penalty is $275 per penalty unit. Small entities are liable to the FTL penalty at a rate of one penalty unit for each period of 28 days (or part thereof) that the return or statement is overdue, up to a maximum of five penalty units. For medium entities (ie a medium withholder for PAYG purposes or one who has assessable income or a current GST turnover of more than $1 million and less than $20 million) the penalty unit is multiplied by two and applies at the same rate as small entities. It is hoped that the amnesty will encourage small businesses to re-engage with the tax system.

In conjunction with the amnesty, the government will also be providing funding to the ATO from 1 July 2023 over four years to assist with engaging more effectively with businesses to address the growth of tax and superannuation liabilities. Specifically, the funding will facilitate ATO engagement with taxpayers who have high-value debts over $100,000 and aged debts (ie more than two years) of either public/multinational groups with aggregated turnover of greater than $10 million, or privately owned groups or individuals controlling over $5 million of net wealth.

ATO target areas for tax time 2023

Tax time 2023 is fast approaching and as with previous years, the ATO has provided some insights to the areas it will be focusing on consisting of rental property deductions, work-related expenses, and capital gains tax. Specifically, the ATO will be targeting loan interest expenses, working from home deductions, and possible capital gains tax where a main residence is also used for income producing purposes. Overall this tax time, the ATO expects fewer individuals to receive refunds or to receive smaller refunds, and more individuals perhaps with tax debts.

With the end of financial year fast approaching, the ATO has again released the areas it will be focusing on in tax time 2023. As with previous years, it will be prioritising areas where the most mistakes are being made, being rental property deductions, work-related expenses, and capital gains tax (CGT). The ATO has identified common mistakes in those areas, to assist taxpayers in avoiding pitfalls and potential compliance activity.

In relation to rental properties, a recent ATO review indicated that nine out of 10 rental property owners are getting their returns wrong, so it is no surprise that this area remains as one of the main tax time targets. Common mistakes of taxpayers include rental income not being reported, overclaiming expenses, or claiming improvements to private properties. However, this tax time, the ATO is particularly focused on interest expenses.

The ATO stresses that rental property owners need to correctly apportion any loan interest expenses where a part of the loan was used for private purposes, or where the loan was refinanced with some private purpose. For example, if you use a part of your rental property loan to buy a car or go on a holiday, the only interest deduction that can be claimed is the portion related to producing the rental income.

Further, for those not doing the right thing, the ATO has reminded taxpayers of the recent commencement of the residential investment property loan data matching program that spans the income years of 2021–2022 to 2025–2026. Data obtained such as amount of interest charged and loan repayments from various financial institutions (including the big four banks and their subsidiaries) will be used to identify discrepancies in returns lodged.

The other focus area the ATO will be enforcing is work-related expenses. It reminds taxpayers that there have been changes to the methods to work out working from home deductions from 1 July 2022. From that date, the taxpayers can either choose the actual cost method or the fixed rate method, with the shortcut method no longer being available. To use either of the methods, taxpayers will need to keep appropriate records, including total number of hours worked from home.

The ATO's last area of focus for tax time 2023 is CGT. In addition to the usual disposal of assets such as shares, crypto-assets, managed investments and properties, the ATO will be looking at situations where a main residence or part of a main residence is used to produce income and is then subsequently sold. This applies where taxpayers have rented out all or part of their main residence through traditional means or through the sharing economy (using Airbnb, Stayz, etc), or where a business is run from home.

Overall this tax time, the ATO expects fewer individuals to receive refunds or to receive smaller refunds, and more individuals perhaps with tax debts. Taxpayers getting behind on their tax debts are encouraged to contact the ATO as early as possible to work out potential solutions and access appropriate support.

Source: www.ato.gov.au/Media-centre/Media-releases/In-the-ATO-s-sights-this-tax-time/

ATO ride-sourcing data-matching program extended

Continuing on from its theme of closing the tax gap of individuals for budget repair, the ATO has notified the public of the extension of an existing data-matching program on ride-sourcing. The program was previously designed to run from the 2015–2016 to the 2021–2022 financial years, capturing information from individuals engaged in providing ride-sourcing services (through platforms such as Uber); this has now been extended to apply to the 2022–2023 financial year.

Information obtained by the ATO in the extended data-matching program will include:

- identification details – driver identifier, Australian business number (ABN), driver name, date of birth, phone number, email, physical addresses etc; and
- transaction details – bank account details, aggregated payment details, gross fares, net amount paid to driver, all other income.

It is estimated that records relating to approximately 200,000 individuals will be obtained.

According to the ATO, the data obtained will be used to identify and address incorrect reporting of income in terms of income tax returns and activity statements. It will also be used to identify instances where individuals fail to meet registration or lodgment obligations (eg GST). While the ATO will not use the data obtained from the program to initiate automated actions or activities, it may be used as a part of the methodologies by which it selects taxpayers for compliance activities.

As with the previous program, the extension does not specifically identify the data providers of ride sourcing services, as the ATO notes that identifying providers that work the ATO "may cause commercial disadvantage". Instead, the ATO is continuing to apply a "principles-based approach" to ensure that the selection of data providers is fair and transparent and includes any ongoing arrangement where the following conditions are satisfied:

- a driver makes a car available for public hire;
- a passenger uses a website, app or similar technology provided by a third party to request a ride; and
- the driver uses the car to transport the passenger for payment with a view to profit.

In addition to potential compliance activities, the ATO will also be using the program to promote voluntary compliance, understand behaviours and compliance profiles of individuals and businesses providing ride sourcing services and obtain a holistic view of taxpayers' income. According to the ATO, in previous years, the data from the ride sourcing program broadly achieved the goals of being used in educational campaigns as well as identifying candidates for review of audit in relation to registration and lodgment obligations.

This particular data-matching program will not be extended beyond the 2022–2023 financial year, given the passing of the Sharing Economy Reporting Regime Bill, which will require operators of various electronic distribution platforms to indefinitely report identification and payment information to the ATO for data-matching purposes from 1 July 2023 for ride-sourcing and short-term accommodation, and from 1 July 2024 for all other reportable transactions.

The data obtained in this data-matching program will be retained for five years from the receipt of the final instalment of verified data from the data providers. The ATO notes that this supports its general compliance approach of reviewing an assessment within the standard period of review and also aligns with the record-keeping requirements for taxpayers.

Source: www.ato.gov.au/General/Sharing-economy-and-tax/Ride-sourcing/
www.ato.gov.au/General/Gen/Ride-sourcing-2015-16-to-2022-23-financial-years-data-matching-program-protocol/
www.ato.gov.au/Business/Third-party-reporting/Sharing-economy-reporting-regime/

Single Touch Payroll Phase 2: avoid common mistakes

With Single Touch Payroll (STP) Phase 2 having been in place for more than a year for some employers, the ATO has now identified common mistakes to avoid for employers that are currently entering into the system after the expiration of their deferrals. These common mistakes relate to pay codes, continuity of year-to-date (YTD) reporting, employee details and employment basis reporting. In addition to employers reporting more detailed information under Phase 2 than STP Phase 1, the ATO will also receive information from super funds.

STP was introduced as a way for employers to send super and tax information directly to the ATO through the use of STP-enabled software solutions. STP Phase 2 is now in full swing, having commenced on 1 January 2022. It requires more detail on the amounts reported through STP; for example, salary sacrificed amounts must be reported separately under STP Phase 2.

In addition to employers reporting more detailed information, under Phase 2 the ATO receives information directly from super funds. When employers make a super payment to their employees' chosen or default funds, the funds will send this information to the ATO so it can be matched with the STP information from the employers to ensure that the correct entitlements are being paid.

The ATO has now identified common STP Phase 2 mistakes to avoid for employers currently entering into the system. These relate to pay codes, continuity of YTD reporting, employee details and employment basis reporting.

In relation to pay codes, the ATO has noticed that some employers have failed to set up the codes correctly and to ensure that payments including allowances, paid leave and overtime are itemised separately. Another issue the ATO has noticed is employers selecting "not reportable" or "do not report to the ATO" incorrectly. Generally, all amounts paid to employees should be reported, and the "not reportable" or "do not report to the ATO" options should only be selected for travel allowances below the ATO's reasonable amount thresholds, overtime meal allowances below the ATO's reasonable amount reimbursements, and post-tax deductions (except for those separately identified).

For employers that transitioned to STP Phase 2 part-way through the financial year, they need to ensure that continuity of YTD reporting is maintained unless the replacing payroll IDs method is used. This varies with the different software solutions used; some will transition to the amounts automatically, while others may require manual input of YTD amounts. Employers should be aware of which one is required by their software provider. The ATO suggests comparing the first STP Phase 2 report with the last STP Phase 1 report to assist in maintaining the correct figures.

As tax time approaches, the ATO also emphasises the importance of having the correct employee information such as names, tax file numbers and dates of birth transitioned into STP Phase 2. Employers also need to report accurate information about their employees' employment basis (eg full-time, part-time or casual) each time the payroll is run.

Specifically, however, the ATO has identified a common issue where the employer omits the cessation date and reason for leaving when an employee's employment ends. In general, it notes that under Phase 2, employers should be reporting a cessation date and reason for an employee when there are also payments that are connected to termination (eg employment termination payments, unused leave termination, lump sums). This information will flow through to Services Australia and help streamline interactions with the employee.

Under STP Phase 2, employers are also required to report a country code when payments are made to employees who derive foreign employment income, are inbound assignees to Australia or are working holiday makers. The country refers to the home country of the individual, and differs depending on the type of income. The ATO has noticed employers using the code "na" to denote "not applicable" in these instances; however, "na" has been assigned as the country code for Namibia and should not be used unless the employee is either working overseas in Namibia or is from Namibia.

While most employers would be used to having to report more detailed information under STP Phase 2, some smaller employers or those with deferrals may still be coming to grips with the different pay codes, classification of different allowances, or having issues with correctly transitioning YTD amounts.

Source: www.ato.gov.au/Business/Small-business-newsroom/Employers/How-to-get-your-STP-Phase-2-reporting-right/ www.ato.gov.au/Tax-professionals/Newsroom/Lodgment-and-payment/Getting-STP-Phase-2-reporting-right/

Victoria to phase out duty on commercial and industrial property

The Victorian Government has announced that transfer duty (formerly "stamp duty") will be phased out for commercial and industrial properties from 1 July 2024. Instead, an annual 1% tax on the unimproved value of such property (the annual property tax) will be introduced. This was announced as part of the State Budget handed down on 23 May 2023.

On the same day that New South Wales introduced legislation to turf out its new annual property tax, Victoria is going its own way. In contrast to its New South Wales equivalent, the broader application of the Victorian annual property tax to commercial and industrial land may cement its success – and its potential extension to residential land in years to come.

In short, under the Victorian measures the first time a parcel of commercial or industrial land is transferred after 1 July 2024, the transferee will still have to pay transfer duty, either:

- as a lump sum; or
- over 10 years, in annual instalments and at interest.

Ten years after the transfer of that property, the annual property tax will apply, locking that property into the new system (apparently, regardless of whether the transfer duty was paid as a lump sum or in annual instalments). This means subsequent transfers of that property will not trigger a transfer duty liability, but will instead be subject to the annual property tax.

The annual property tax will not impact industrial and commercial property acquired before 1 July 2024, but only once such property is transferred (and therefore permanently entered into the new regime).

The government announcement is brief, and raises a number of questions which we hope will be resolved during industry consultation.

What don't we know?

How will the annual property tax be administered?

Questions remain as to the administration of the annual property tax, including the following:

- What will be the definition of "commercial" and "industrial"?
- Does the government currently have the data available to determine whether a property is commercial or industrial, rather than residential?
- Will this include primary production land used in a farming business (and therefore potentially "commercial")?
- Will apportionment apply for land that is mixed use?

A good starting point may be the concepts used for the Victorian regional commercial, industrial and extractive industries property duty concession.

Otherwise, we could potentially look to the "land use code" system of South Australia, which abolished stamp duty on transfers of all property except for residential and primary production property. The South Australian Valuer General effectively assigns a code to each property based on its current use. When the property is later transferred, this code is then used to ascertain its current use, and therefore whether duty should apply.

How will the annual property tax work with other duty rules and taxes?

It will be interesting to see how the annual property tax will interact with landholder duty, duty on economic entitlements and duty on sub-sales, to name a few. Perhaps these rules will only apply to land that is not classified as commercial or industrial – such as residential land. These classifications are yet to be defined.

Additionally, the Victorian Government has not yet mentioned whether the annual property tax will also replace land tax. As it is given no mention in the announcement, it is likely that the annual property tax will be charged alongside land tax.

In respect of Federal income tax, it is likely that the annual property tax will be treated similarly to duty and land tax – that is, as a holding cost of a CGT asset and therefore added to the asset's cost base. But, as an annual cost, will it be deductible similarly to land tax in certain limited instances? Or will it be considered a cost of holding a capital asset?

What happens if the property is sold within 10 years of the first post-1 July 2024 transfer?

Where a parcel of commercial or industrial land is transferred after 1 July 2024, and the transferee opts to pay the relevant transfer duty over 10 years, will the balance of that liability need to be paid prior to or at the time of any subsequent transfer of that property within that 10-year period?

We would expect that upon that subsequent transfer being made, the property will be immediately subject to the annual property tax.

What exemptions will apply?

The announcement did not contain any detail regarding the availability of exemptions.

For example, duty exemptions currently apply (in certain circumstances) to:

- transfers of properties to charities;
- contributions of land by owners to their superannuation funds; and
- distributions of land from trusts to beneficiaries.

We would hope to see existing transfer duty exemptions largely replicated for the annual property tax, so that taxpayers are not disadvantaged.

What will the interest rate be on duty deferred?

The transfer duty charged on the first transfer of commercial or industrial property after 1 July 2024 can be deferred and repaid annually over 10 years – but at interest. No indication has been given as to the rate of interest. In other instances (eg the new windfall gains tax regime), the 10-year Australian government bond rate (currently 3.618%) has been adopted. Whether a consistent approach is applied here remains to be seen.

Who does this affect, and how?

Growing businesses

This annual property tax may be seen as a boon for businesses and is being touted as one. The benefit it provides for the acquisition of new business property is undeniable – the reduced upfront purchase costs should mean the additional funds can be reinvested in the growth of the business. On paper, it should provide businesses with greater flexibility, enable new property acquired at a reduced upfront cost, and property being transferred more easily between related entities.

Transactions under consideration: to defer or not to defer?

On one reading of the announcement, any first purchaser of commercial or industrial property after 1 July 2024 is potentially worse off. In addition to transfer duty (either paid up-front or deferred), they will also be subject to the annual property tax after 10 years.

This is being billed as a way to soften the impact of a transition to the new annual property tax, but may not achieve that in reality. Purchasers of commercial and industrial properties may be worse off under this proposal, given transfer duty is charged on the greater of the unencumbered (market) value of the property and consideration paid for it, whereas the annual property tax is to be charged on the unimproved value of the land. Where the improvements on the land are of substantial value, this transitional measure may dilute the effect of this measure, and possibly produce a worse outcome for some transferees.

Therefore, in most cases, a business considering acquiring such property within the next year or two, may be considering whether the acquisition should occur before 1 July 2024.

We expect that the announcement is likely to cause some short-term uncertainty and distortion of the Victorian commercial property market, as buyers weigh up the costs of delaying transactions against the potential cost savings that may be realised from the (as yet not enacted) measure.

This announcement may also have material impacts upon the settlement of certain commercial and private disputes, which require the transfer of interests in Victorian land. Again, parties to any such settlement may be considering whether it is in their best interests to delay the finalisation of the dispute.

What does this mean for tenants and landlords?

A key question is whether landlords will try to pass on the annual property tax to tenants under their lease agreements. No doubt new leases will begin to specifically mention the annual property tax, although generic "rates and taxes" clauses in most existing leases will likely be wide enough to capture the tax. Property fund managers will also likely need to factor in the annual property tax and its impact on investor returns.

The *Retail Leases Act 2003* (Vic) precludes the recovery of land tax – will the government amend that legislation to exclude the annual property tax as well?

What does this mean for financiers?

The reduction in the upfront cost of purchasing a property may reduce leverage for borrowers. However, financiers must be mindful of the risk that a borrower does not pay the annual property tax.

This has the potential to erode the financier's security position as it is likely that the annual property tax will be a statutory priority that must be paid first in a mortgagee sale. Financiers may impose annual reporting obligations on borrowers and specific covenants regarding on-time payment of the tax.

Where to next?

Key details of the reform will be revealed later this year, after consultation with industry. Between now and 1 July 2024, we anticipate that businesses will be considering whether existing or planned acquisitions (or divestments) of commercial or industrial property should be fast-tracked (or delayed).

Source: www.sro.vic.gov.au/state-budget-2023-24-announcement
www.dtf.vic.gov.au/state-budget/2023-24-state-budget

Employers to pay super at same time as wages

Employers may need to start paying employee super guarantee contributions at the same time as wages if a recent Federal Government announcement becomes law. It is estimated that around $3.4 billion worth of super went unpaid in the 2019–2020 income year, which disproportionately affected employees in casual, part-time or lower-wage sectors. The government hopes that the simple payday super change will make it easier for employees to keep track of their super payments, and also enable businesses to make payroll management smoother.

The government has announced that from 1 July 2026, employers will be required to pay their employees' super at the same time as their salary and wages (ie payday super). The three-year lead time is to give businesses, super funds, payroll providers and other parts of the superannuation system sufficient time to prepare for the change.

According to ATO estimates, in 2019–2020, around $3.4 billion worth of super went unpaid. While the onus to chase up unpaid super currently lies with the employee, this is made all the more difficult by the employer only having to show the amount of super they are liable to pay, not the actual amount paid. Currently, employers are only required to pay super for eligible employees on a quarterly basis, meaning that many employees realise far too late that they have not been paid the correct amount of super. The ATO notes that it will generally not pursue unpaid super enquiries where the complaint is for a period that ended over five years ago.

Once an employee notices that they have not been paid the correct amount of super, recovery can be an onerous process of providing relevant evidence to initiate an investigation with either the ATO or the Fair Work Ombudsman. As evidenced by the amount of estimated unpaid super each year, many unscrupulous business owners will have either abandoned or liquidated the business by this point, leaving employees with nothing.

While some eligible employees will be able to claim unpaid wages and annual leave under the Fair Entitlements Guarantee, super guarantee contributions cannot be claimed, leaving employees, particularly those in casual, part-time or lower-wage sectors, worse off in retirement. The government hopes that the simple payday super change will make it easier for employees to keep track of their super payments, making it harder for disreputable employers to exploit this loophole.

Treasurer Jim Chalmers MP has noted that more frequent super payments will make employers' payroll management smoother with fewer liabilities building up on their books, while also benefitting employees. It is projected that a 25-year-old median income earner currently receiving their super quarterly and wages fortnightly could be around $6,000 or 1.5% better off at retirement just with this small change.

To complement the payday super measure, the government has also announced that the ATO will receive additional resourcing to help detect unpaid super payments earlier. New enhanced targets will also be set for the ATO for the recovery of super payments. Jointly, Federal Treasury and the ATO will commence consultation on these changes in the second half of 2023.

It should be noted that legislation related to these measures has not yet been released, let alone passed Parliament. Therefore, these measures are not yet law, but given the broad political support in wake of the announcements, it is likely that these proposals will be introduced as soon as various consultation concludes.

Key considerations for employers and employees

Requiring employers to pay their employees' superannuation guarantee entitlements on payday will be a significant change from the current requirements for employers.

How will payday super affect employees?

There are considerable employee benefits to having more frequent super guarantee payments, such as:

- Improvement in retirement incomes – there is additional investment income-earning opportunity within the superannuation fund.
- Increased safeguards from underpayment or non-payment of super – prompt payment by employers allows employees to easily monitor their super guarantee contributions, minimising the risk that the entitlements are not paid at all. According to the government, payday super will be of particular benefit to those in lower paid, casual and insecure employment who are more susceptible to lose out on their super benefits when super is paid less frequently. In this category, women are overrepresented.

How will payday super affect employers?

While the benefits to the employee are clear, there are also key considerations about the changes for employers:

- Investing in automation – increased payment frequency requires more payroll hours, particularly for businesses with weekly or fortnightly payrolls. Employers who are still completing super reporting manually will need to invest in automation and take advantage of the existing digitisation now available for fully integrated super stream reporting in order to effectively deal with the administrative demands of payday super.
- Management of cash flows – employers will need to carefully plan their cash flows, as super guarantee payments would have to be made on payday rather than having an option to defer the payments until the quarterly due dates.
- Improving processes for new employees – employers will need to review and tighten their onboarding processes since the increased payment frequency may significantly reduce the time in which new employees must provide their superannuation fund details, as well as the need for employers to request their stapled fund details. This reduced time may result in late super guarantee payments.
- Returned super – super guarantee contributions refunded to employers due to inaccurate information may not become known to the employer until several days or weeks after the payment date. Increased payment frequency may result in a higher volume of returned contributions to reprocess, resulting in late super guarantee payments.
- Out-of-cycle pays – employers will need to re-assess their existing out-of-cycle pay policies, as payday super compliance may create additional administrative work.
- Increased compliance cost – under the current rules, employers that fail to make a super guarantee payment by the due date must pay the superannuation guarantee charge (SGC), which includes interest charges, administrative costs, and the loss of income tax deductibility for the contribution. While it is unclear whether the regulations around SGC will be affected as a result of payday super, the increased frequency of super guarantee payments will make employers susceptible to incurring SGC.

What's next?

Treasury and the ATO will consult closely with industry and stakeholders on these changes in the second half of 2023.

The final design will be considered as part of the 2024–2025 Federal Budget. There is clearly some lead time for employers concerning this major change and they should carefully monitor the consultation process.

Source: https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/introducing-payday-super

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