

Submission to the Senate Committee re Superannuation Guarantee Act

I welcome this opportunity to put a view and was advised of this Committee Hearing by the Office of the Inspector General Taxation.

After 15 years of attempting to hold the ATO to account for the way in which they investigated? applied the regulations in the Super Guarantee Act I feel I have a good knowledge of the Act and the way the ATO approaches administering the law.

Submission background

Problem:

In 2002 after years of attempting to have employer advise whereabouts of Super an Employee Notification was lodged with the ATO.

They investigated, recover a small portion of the amount owing and in November 2006 advised that the Company had been deregistered in June 1996, therefore they were closing their investigation. (it took them 4 years to discover this).

Over the following years I continued to attempt to have the ATO follow up.

We utilised the Commonwealth Ombudsman, Administrative Appeals Tribunal (the ATO advised the AAT it was not in their jurisdiction) applied for payment under the CDDA scheme..denied applied for an Act of Grace Payment (on advice from our local MP) denied, local member applied for review of decision...denied, appealed for assistance through Senator Ronaldsons office... review denied, Senator John Madigan review denied..... Yet on presentation of documents (all official) to the MPs they agreed that the ATO had failed to administer as per the Act and they would take up the matter....No results.

The application for compo under the CDDA scheme was administered and investigated by the ATO.

The refusal for a payment under Act of Grace was refused on the advice of the ATO.

The ATO protects itself.

(In 2000 another employee retired and lodged an EN with the ATO, it was investigated and the employee received funds. (Surely the ATO should have investigated other employees at the time)

The ATO advised the Ombudsman that they audited the business in 2002 (same year as EN) re a \$50,000 debt to the ATO...(I bet they recovered their funds) why would the Super requirements of the business not be part of the audit?

At the same time as EN was lodged a request was lodged with the Office of Work Services re underpayment of wages.....by July 2002 (five months later) that Office had completed their investigation and recovered almost \$20,000 in underpaid wages....yet the ATO failed to

identify employer. (from July 1996 it was NOT the deregistered Company, Workplace Services documents verify this).

RECENT ACTIVITY

Recently we approached Senator Hinch for assistance, once more on presentation of the documents to his officer they agreed the ATO had failed and were advised to make application for assistance to Inspector General Taxation... which they (Hinch's Office did)...

The IGT report was received today (6/2) and of course they are unable to assist us.....we are looking for Superannuation compensation as the Company (deregistered 1996) continued trading under a partnership (not that it is the employee who needs to know how a business is structured!!). We advised the ATO when one of the partners passed away and the Executor called for anyone with a claim on the estate to notify her...documents confirm I advised the ATO. The ATO did not apply. Once more the IGT decision came after input from the ATO.

The IGT document states " there are a number of factors which may impact the extent to which we may be able to assist you in this matter. These factors include the IGT NOT reinvestigating matters which have been previously considered by the Ombudsman". Therefore what is the purpose of the IGT?. One asks what is the role of the IGT if it does not investigate the matter as a whole??

Whilst 25 years have passed since the Super Guarantee Act became law it is most concerning that the loop holes obviously known to the ATO have NOT been closed.

Indeed the ATO advice in 2006 after discovering deregistration 10 years previously actually states that the ATO computers were not compatible in 2002.....surely this was known and the ATO should have used mail/phone/email etc to communicate with other departments.

The Act actually states how to proceed with deregistered Companies...if it was not in the Act in 2002 surely that is an administrative deficiency.....

By 2002 10 years had elapsed and still the ATO had not have the Act amended to cover most eventualities....

HOW TO FIX THE PROBLEM for everyone

If after receipt of an EN the ATO investigates and finds that no or insufficient Super has been paid and say 12 months goes by (and the outstanding amount is say in excess of \$5,000)

A tribunal at which the ATO, Employer and Employee attend, all giving their side. The tribunal should issue orders through the Magistrates Court (or some other legal mechanism).

Therefore the time frame would be shortened and the offending employer called to account.....and make amendments retrospective.

Perhaps once an employer is found to be noncompliant/ has an EN lodged against him his and the employees tax returns need to be under a system that is able to verify that payments have been made/ are made in the future.

The IGT

The terms of reference for the IGT to investigate need to be extended to include anything he deems necessary to investigate. (especially in cases as complicated as .

It is noted that amendments have been made to the Act over the years however they were not made retrospective...had that happened outcome may have been entirely different...official documents state this.

There are many statements etc in the official documentation that show faults within the Legislation and I am more than ready to speak to someone about our experience... I realise this committee can probably not assist us with compensation.

Honest taxpaying citizens expect the laws and the systems to protect their rights and penalise uncooperative employers who do not obey the laws. To put it another way taxpayers expect dodgy/dishonest employers to be dealt with by the ATO administering as per the Act. (This did NOT happen in case).

We also expect that those charged with administering the law will do so .

In making this submission I am trying to point out that there are many anomalies within the Act and the ATO is lax in not making the Act almost watertight. The ATO does not administer as per the Act and actually gives misleading/incorrect advice to the client.

I remain,
Yours sincerely,