



14 October, 2019

Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
CANBERRA ACT 2600

Dear Mr Fitt

RE: TREASURY LAWS AMENDMENT (RECOVERING UNPAID SUPERANNUATION) BILL 2019

Thank you for your letter of 8 October 2019 in relation to the above Bill. In your letter you sought clarification on the provisions as currently drafted, specifically:

'Where an employer is eligible for the amnesty in relation to a superannuation guarantee shortfall, do the penalties under Subdivision 284-B of Schedule 1 of the Taxation Administration Act 1953 apply?'

Having consulted with the Australian Taxation Office (ATO), I can provide the Committee with the following information:

- The penalties under s284-75 of Schedule 1 of the *Tax Administration Act 1953* ('the TAA') are in place to encourage entities to take reasonable care to comply with their tax obligations by allowing the imposition of penalties for false and misleading statements that result in a Superannuation Guarantee Charge (SGC) shortfall amount.
 - Entities that do take reasonable care in providing statements to the Commissioner are exempt from penalties under s284-75.
- The ATO has advised that the Commissioner of Taxation has broad discretionary powers under s298-20 of the TAA to remit in full any administrative penalties imposed under s284-75. In exercising these powers for disclosures made under the Amnesty contained in the above Bill, the Commissioner will take into account the following:
 - the ATO's general administrative approach to applying penalties under s284-75 of the TAA, published as *PSLA 2012/5 Administration of the false and misleading statement penalty – where there is a shortfall amount*; and
 - whether the entity has qualified for the Amnesty under the proposed s74 of the *Superannuation Guarantee (Administration) Act 1992*.
- The ATO has advised that in all but the most egregious cases (for example, where an entity has intentionally made repeated false statements which result in very large SGC shortfall amounts), where an employer makes a voluntary Amnesty disclosure as provided for under the Bill, s284-75 penalties will not be applied by the Commissioner – they will be remitted in full.

Thank you once again for your correspondence on this matter. Please do not hesitate to contact me again should the Committee require any further information to assist in its deliberations.

Yours sincerely



Robert Jeremenko
Division Head
Retirement Income Policy Division

CC. James O'Halloran (Deputy Commissioner, Australian Taxation Office)