6 August 2026

Attn: Ms Kate Power
The Contact Officer
Superannuation and Employer Obligations
Australian Taxation Office

By email: kate.power@ato.gov.au

Dear Ms Power,

Superannuation Guarantee Ruling SGR 2026/D1 – Superannuation Guarantee: work arranged by intermediaries ("Draft SG Ruling")

The Australian Bookkeepers Association, Chartered Accountants Australia and New Zealand, CPA Australia, the Institute of Certified Bookkeepers, the Institute of Public Accountants, the SMSF Association and The Tax Institute (together, **the Joint Bodies**) write to you as the peak professional accounting, bookkeeping, tax, financial advice and superannuation bodies in Australia. We welcome the opportunity to make a submission to the Australian Taxation Office (**ATO**) regarding its consultation on the Draft SG Ruling which is intended to update current ATO guidance.

The Joint Bodies acknowledge the important role that the Draft SG Ruling is intended to play in providing certainty about which entity is responsible for Superannuation Guarantee (**SG**) obligations in tripartite arrangements. This certainty is especially important in the Payday Super environment, where SG contributions must generally be made within the legislated timeframe that broadly aligns superannuation contributions with the payment of salary and wages.

We also note that the Draft SG Ruling represents an update on Superannuation Guarantee Ruling SGR 2005/2[1] which was published on 30 November 2005. We support the ATO updating its guidance in this area, particularly given the changes in case law, workforce arrangements and superannuation guarantee compliance settings since SGR 2005/2 was issued.

In our view, the principal changes from SGR 2005/2 are the incorporation of more recent High Court, Full Federal Court and Administrative Appeals Tribunal decisions, together with updated references to contemporary Australian contract law texts.

While the Joint Bodies support the Draft SG Ruling and the ATO's efforts to update its guidance, we have identified several areas where further clarification or enhancement would improve the practical operation of the final ruling and provide greater certainty for taxpayers.

Key recommendations

The Joint Bodies recommend that the final ruling:

- clarify the interaction between the federal SG employer test and State and Territory labour hire licensing regimes;

[1] Superannuation Guarantee: work arranged by intermediaries

- explain how the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGAA**) test interacts with section 15AA of the *Fair Work Act 2009* (Cth) (**FWA**) and the extended employee provisions in section 12 of the SGAA;
- clarify the interaction between SG obligations and PAYG withholding obligations in tripartite arrangements, particularly where SG liability arises under the extended employee provisions in section 12 of the SGAA;
- reconsider the exclusion of subsection 12(8) of the SGAA from the scope of the final Ruling or, alternatively, develop separate guidance addressing common arrangements in the entertainment and creative industries;
- address the practical implications of the ruling in the Payday Super environment;
- include more contemporary examples reflecting modern labour-market arrangements; and
- ensure related ATO guidance, including PCG 2023/2, is updated consistently with the final ruling.

Detailed comments

Interaction with State and Territory based labour hire lawsWe note that some States and Territories, in particular the ACT, Queensland, South Australia and Victoria, have laws that require labour hire providers to be licensed. We understand that the Commonwealth and other States and Territories are considering how to introduce nationally consistent labour hire regulation and licensing.

We believe that the final Ruling should acknowledge the current regulatory landscape – that is, that each jurisdiction that requires registration has different relevant definitions. The final ruling should clearly explain whether, and to what extent, the ATO considers State and Territory based labour hire licensing regimes may affect the identification of the employer for SGAA purposes in tripartite work arrangements.

Interaction between the FWA, income tax law and SGAA

Section 15AA of the FWA, introduced by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* commenced on 26 August 2024, contains an expanded definition of “employee” for FWA purposes. In general terms, section 15AA requires consideration of the real substance, practical reality and true nature of the relationship, including how the arrangement operates in practice.

By contrast, TR 2023/4 explains that, for *Taxation Administration Act 1953* (Cth) (**TAA**) and SGAA purposes, the ordinary meaning of “employee” is determined primarily by reference to the parties’ contractual rights and obligations, particularly following *Personnel Contracting* and *Jamsek.*

However, section 12 of the SGAA also contains extended meanings of “employee”, including subsection 12(3), which can apply where a person works under a contract that is wholly or principally for their labour.

Section 15AA of the FWA, the ordinary meaning of employee for TAA and SGAA purposes, and the extended employee provisions in section 12 of the SGAA may result in different outcomes when characterising the same worker arrangement. In a tripartite arrangement, this creates the potential for uncertainty where an entity may be regarded as the employer for one legislative purpose, but not for another. Given the increasing prevalence of labour hire and other intermediary arrangements, we consider that the final Ruling should acknowledge these differences and explain how the SGAA employer tests interact with the broader legislative framework.

We consider that the relationship between these provisions can be represented graphically as follows:

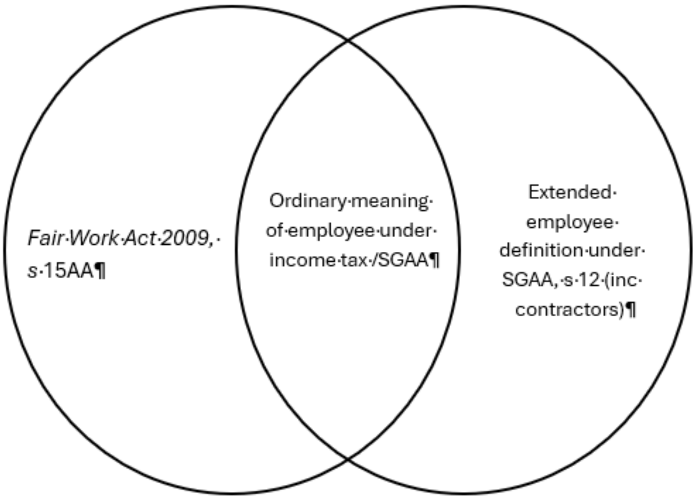

Figure 1: Different employee classification tests may apply under workplace relations law, income tax law and superannuation guarantee law.

It is our view that the final Ruling should contain a discussion on these issues and include relevant examples illustrating how tripartite arrangements may be characterised under the FWA, the TAA and the SGAA. Such guidance would assist taxpayers in understanding why different legislative regimes may produce different outcomes and how those differences affect the identification of the employer for SG purposes.

Potential incompatibility with PAYG withholding provisions

We submit that, even where the Draft SG Ruling identifies which party is the "employer" for SG purposes in a tripartite arrangement (see paragraphs 12 to 14), this does not necessarily determine which entity has an obligation to withhold PAYG under Subdivision 12-B of Schedule 1 to the TAA.

Section 12-35 of Schedule 1 to the TAA requires an entity to withhold from salary, wages, commission, bonuses or allowances it pays to an individual "as an employee (whether of that entity or another entity)". As a result, where an individual is an employee at common law, the PAYG withholding obligation will generally rest with the entity that makes the payment. This outcome is consistent with the ordinary meaning of "employee" referred to in the Draft SG Ruling and discussed in TR 2023/4.

A more significant area of divergence arises where superannuation guarantee liability is established under the extended employee provisions in section 12 of the SGAA. For example, subsection 12(3), which applies to contracts wholly or principally for a person's labour, and subsection 12(8), which applies to payments for participation or performance, have no direct equivalent for PAYG withholding purposes.

We note that footnote 17 to paragraph 25 of the Draft SG Ruling expressly places categories such as subsection 12(8) outside the scope of the Ruling on the basis that the Commissioner considers them "not likely to be relevant in practice in the context of intermediary firms". Consequently, an entity may have an SG obligation in respect of an individual under the extended employee provisions of the SGAA without any corresponding obligation, or entitlement, to withhold tax under section 12-35 of Schedule 1 to the TAA.

Feedback from our members indicates that this distinction is not well understood in tripartite and gig-economy arrangements. This can result in businesses incorrectly assuming that the absence of a PAYG withholding obligation indicates the absence of an SG obligation, or vice versa.

We recommend that the final Ruling include a clear statement, building on the discussion in paragraphs 15 and 16 of the Draft SG Ruling, that identifying the employer for SG purposes under sections 12(1) and 12(3) of the SGAA does not, of itself, determine PAYG withholding obligations. We also recommend that the ATO provide further guidance, either in the final Ruling or related materials, on how entities should separately consider SG and PAYG withholding obligations in tripartite arrangements, particularly where SG liability arises under the extended employee provisions in section 12 of the SGAA.

Tripartite arrangements involving the entertainment and creative industries

We note that footnote 17 to paragraph 25 of the Draft SG Ruling states that categories within the extended definition of "employee" that do not depend on the existence of a contract, including subsection 12(8) of the SGAA, are not addressed in the Ruling on the basis that they are "not likely to be relevant in practice in the context of intermediary firms".

In our view, this assumption does not reflect arrangements commonly encountered in the entertainment and creative industries. In these sectors, subsection 12(8) is frequently the operative basis for determining superannuation guarantee obligations and tripartite structures are commonplace. For example, performers may be engaged through agents, managers, promoters, venues or event organisers, with multiple parties involved in arranging and facilitating the engagement.

A common source of uncertainty arises where a band or performance group is engaged by a principal, such as a venue, festival or event promoter, and a single member (group representative) receives payment on behalf of the group. Existing edited private ruling guidance (1052234843066) indicates that, in these circumstances, the principal's SG obligation may be limited to the group representative, who may in turn have SG obligations in relation to the remaining members of the group. However, this view is contained in a private ruling and does not provide precedential guidance for other taxpayers.

We consider that this scenario, together with variations involving genuine partnerships, joint ventures and companies invoicing on behalf of performers or groups, would be suitable for inclusion as worked examples in the final Ruling.

More broadly, we note that none of the examples currently included in the Draft SG Ruling reflects entertainment, creative or events-industry arrangements. Given the prevalence of these arrangements and the ongoing uncertainty regarding the application of SG obligations in this sector, we recommend that the ATO reconsider its decision to exclude subsection 12(8) of the SGAA from the scope of the final Ruling. Subsection 12(8) is an important provision that applies to sportspersons, performers, artists, musicians, actors and other entertainers. Considering tripartite arrangements are common in these industries, we are of the view it is important for SGR 2026/D1 to address the application of subsection 12(8) in these contexts when it is finalised.

We also recommend that the ATO commit to reviewing, updating and expanding Superannuation Guarantee Ruling SGR 2009/1: *Superannuation guarantee: payments made to sportspersons*, which is currently focused on sportspersons, to ensure that ATO guidance adequately addresses the full range of activities contemplated by subsection 12(8), including its application to performers and others engaged in sports, entertainment and related activities.

Practical implications in the Payday Super environment

The Joint Bodies note that employers will generally be required to make time-critical decisions regarding SG contributions within the legislated Payday Super timeframes. In tripartite arrangements, uncertainty regarding the identity of the employer may create practical compliance risks, particularly where multiple entities are involved in engaging, paying and directing workers.

As a practical solution to these compliance challenges, the final Ruling should clearly state that, in a tripartite arrangement, an individual will have only one employer for SG purposes. While another entity may satisfy the employer's SG obligations on its behalf, this should only occur where there is a clear agreement between the parties. The parties should agree which entity is responsible for making SG contributions within the Payday Super timeframes, and that agreement should clearly set out the responsibility for meeting those obligations, together with requirements to maintain and share appropriate records. These records could then be relied upon for ATO or Fair Work Ombudsman compliance and audit purposes if required.

We further recommend that the final Ruling include practical guidance and examples demonstrating how the employer identification principles should be applied in a Payday Super environment. In particular, the examples should illustrate how entities in tripartite arrangements can identify the employer for SG purposes and document arrangements under which another entity satisfies the employer's SG obligations within the Payday Super timeframes.

More contemporary examples

We note that the draft SG Ruling contains examples which are very similar to SGR 2005/2. In the intervening years, the employment market has evolved. Consequently, in addition to our request above about examples involving the FWA and income tax law, we consider that the current examples in the draft SG Ruling should be updated to reflect modern-day work arrangements. We suggest that the ATO's Edited Private Advice database may provide a useful starting point for developing more contemporary examples that could be included in the final Ruling. We also suggest that the Federal Court decision in *Hatfield*[2] and the

[2] https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2025/2025fca0182

Administrative Appeals Tribunal decision in *S&H Investments*[3] could provide useful fact patterns for additional examples.

Consistency with PCG 2023/2

The Joint Bodies also recommend that the ATO update *Practical Compliance Guideline* PCG 2023/2*: Classifying workers as employees or independent contractors* concurrently with finalising the Draft SG Ruling, so that the ATO's compliance approach to worker classification remains consistent and up to date across related guidance publications.

Other comments

Incorrect cross-reference in paragraph 16

We note that paragraph 16 of the Portable Document Format (PDF) version of the Draft SG Ruling appears to contain an incorrect link. The website version indicates that the relevant reference should be to paragraph 14 of TR 2023/4.

If you would like to discuss any of the issues we raise in our submission, please contact Tony Negline, Superannuation & Financial Services Leader at Chartered Accountants Australia and New Zealand at tony.negline@charteredaccountantsanz.com.

Yours faithfully,

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3 https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2024/893.html

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