

One-Off Super Guarantee Amnesty

Employers that have fallen behind with their superannuation guarantee (SG) obligations will have 12 months to “self-correct” under a new amnesty announced late last month.

The ATO estimates that \$2.85 billion is currently owed in late or missing SG payments. Running from 24 May 2018 for 12 months, the amnesty encourages employers to reduce this SG gap by providing relief from the punitive penalties that normally apply to late payments.

Even if you do not believe that your business has an SG underpayment issue, it is worth undertaking a payroll audit to ensure that your payroll calculations are correct and employees are being paid at a rate that is consistent with their entitlements under workplace laws and awards.

Qualifying for the Amnesty

The amnesty applies to employers that have underpaid or not paid SG for any period from 1 July 1992 up to 31 March 2018.

To qualify for the amnesty, employers must disclose the outstanding SG to the Tax Commissioner using the [SG Amnesty ATO payment form](#) where the payment has been made directly to the employee’s fund. You either pay the full amount owing, or if the business cannot pay the full amount, enter into a payment plan with the ATO. If you agree to a payment plan and do not meet the payments, the amnesty will no longer apply.

Bear in mind that the amnesty only applies to “voluntary” disclosures. The ATO will continue its compliance activities during the amnesty period so if they discover the underpayment first, full penalties apply. The amnesty also does

not apply to amounts that have already been identified as owing or where the employer is subject to an ATO audit.

What do Employers Pay under the Amnesty?

Normally, if an employer fails to meet their quarterly SG payment on time they need to pay the SG charge (SGC) and lodge a Superannuation Guarantee Statement. The SGC applies even if you pay the outstanding SG soon after the deadline.

Employers pay:

- The SGC comprised of:
 - The outstanding SG entitlements (although this component might be higher than what it would have been had the entitlements been paid on time);
 - Interest of 10% per annum; and
 - An administration fee of \$20 for each employee with a shortfall per quarter.
- Penalties of up to 200% of the amount of the underlying SG charge.
- A general interest charge if the SGC or penalties are not paid by the due date.

On top of this, the SGC amount is **not** deductible - even if you pay the outstanding amount. That is, if you pay SG late, you can no longer deduct the SG amount even if you bring the payment up-to-date.

Under the quarterly superannuation guarantee, the interest component is calculated on an employer’s quarterly shortfall amount from the first day of the relevant quarter to the date when the SG charge would be payable (not from the date the SG was overdue).

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- The SGC:
 - The outstanding SG entitlements;
 - Interest of 10% per annum;
 - No administration fees.
- No penalties.
- A general interest charge.



An extra benefit of using the amnesty period to catch up is that the SGC amount is deductible. The ability to deduct SGC and the reduction in penalties could be significant for employers that have fallen behind with their SG obligations.

Special provisions exist within the legislation to automatically protect employees from inadvertently breaching concessional contribution cap limits if the unpaid SG is paid to the Commissioner and then transferred to the employee's superannuation fund. Where the employer makes the payment directly into the employee's fund, the individual would need to apply to the Commissioner requesting the exercise of discretion to either disregard the concessional contributions or allocate them to another financial year.

Where to from Here?

Legislation enabling the amnesty is currently before Parliament and will not become law until at least June 2018. Despite this, the clock is ticking.

If your business has fallen behind on its SG obligations and is eligible for the amnesty, you need to start working through the issues now or contact us to work through the issues for you. There are several calculations that need to be completed and these may take some time to complete.

If your business has engaged any contractors during the period covered by the amnesty, then the arrangements will need to be reviewed as it is common for workers to be classified as employees under the SG provisions even if the parties have agreed that the worker should be treated as a contractor. You cannot contract out of SG obligations.

If you have not undertaken a payroll audit or an audit of rates paid to employees, you should do this within the next 12 months.

If a problem is revealed, you can correct it without excessive penalties applying. If you are uncertain about what Award and pay rates apply to employees, the FairWork Ombudsman's website has a [pay calculator](#) or you can contact them [online](#) or call them on 13 13 94.

What's Changed from 1 July 2018?

Individuals

Personal tax bracket changes - the top threshold of the 32.5% personal income tax bracket will increase from \$87,000 to \$90,000*.

Introduction of the low and middle income tax offset* - providing a tax offset for those with taxable income of up to \$125,333.

GST on property developments and residential subdivisions

– the way GST is collected on sales of newly constructed residential properties or new subdivisions will change from 1 July. Purchasers will be required to remit the GST directly to the ATO as part of the settlement process. If you are buying a property, it is essential that you check the details to ensure that these new requirements have been managed (*see this issue in Business also*).

Business

Single touch payroll - employers with 20 or more employees at 1 April 2018 must use standard business reporting-enabled software from 1 July 2018 to report payments such as salaries and wages, PAYG withholding and superannuation. Single touch payroll is expected to be compulsory for businesses with 19 or less employees from 1 July 2019.

The \$20,000 instant asset write-off for small business has been extended until 30 June 2019.

GST on low value goods – GST will apply to overseas sales of goods supplied to Australian consumers with a value under \$1,000.

GST on property developments and residential subdivisions

– the way GST is collected on sales of newly constructed residential properties or new subdivisions will change from 1 July. The vendor will no longer collect and remit GST on the purchase price of the residential premises. Instead, the vendor must notify the purchaser in writing that the GST needs to be paid to the Commissioner and advise the amount that must be paid. In most situations, the amount will be $\frac{1}{11}$ of the contract price.

Where the margin scheme is used, it is 7% of the contract price. Where the transaction is between associates, it is 10% of the GST-exclusive market value. Notification rules will also apply to the vendor, even if the transaction does not trigger a GST liability.

Research and development (R&D) changes* - the way the R&D tax incentive is managed will change with caps introduced on cash rebates and for large companies, a refocussing of R&D to high intensity R&D activities.

Changes to the wine equalisation tax – the rebate cap will reduce from \$500,000 to \$350,000 and the eligibility criteria tightened.

Significant global entity definition change* - special reporting requirements are in place for significant global entities (SGEs) - large global entities with revenues in excess of \$1 billion or a member of their group. Many smaller companies that are related to or subsidiaries of these large entities are also affected. This definition will be broadened further to include members of large multinational groups headed by private companies, trusts and partnerships, and members of groups headed by investment entities.

Superannuation

Event-based reporting for SMSFs - a new reporting regime commences for SMSFs. All SMSFs must report events that affect their members' transfer balance accounts (e.g. when an SMSF member first starts to receive a pension from their fund). Timeframes for reporting are determined by the total superannuation balances of the SMSF's members. Where all members of the SMSF have a total superannuation balance of less than \$1 million, the SMSF can report this information at the same time as the annual return. SMSFs that have any members with a total superannuation balance of \$1 million or more must report events affecting members' transfer balances within 28 days after the end of the quarter in which the event occurs.

Carry forward concessional contributions – people with superannuation balances below \$500,000 will be able to rollover their unused concessional caps for up to five years. Unused cap amounts can be carried forward from the 2018/19 financial year, which means the first opportunity to use these new rules will be 2019/20.

Downsizer contributions - if you are over 65, have held your home for 10 years or more and are looking to sell, you might be able to contribute some of the proceeds of the sale of your home to superannuation.

First home saver scheme – first home savers are able to withdraw voluntary, after-tax superannuation contributions they have made to put towards their first home.

Changes to protect employees against inadvertent breaches of concessional caps* - individuals whose income exceeds \$263,157 and have multiple employers will be able to nominate that their wages from certain employers are not subject to the superannuation guarantee.

**Change has been announced but has not become law at the time of writing.*

Who Gets a Tax Cut from 1 July?

1 July 2018 is the start date for the seven year income tax plan announced in the recent 2018/19 Federal Budget. The seven year plan benefits low and middle income earners in the first few years before expanding out to a broader restructure of the tax rates and brackets for everyone.

From 2018/19, the top threshold of the 32.5% personal income tax bracket will increase from \$87,000 to \$90,000. Dovetailing into the tax bracket change is the introduction of the Low and Middle Income Tax Offset for those with taxable incomes up to \$125,333. The offset is a non-refundable tax offset that you receive when you lodge your income tax return.

If your annual taxable income is \$80,000 in 2018/19, then the personal income tax changes provide an annual tax reduction of \$530 per year. If your annual taxable income is \$120,000, then the changes give you an annual reduction of \$215.

The legislation enabling the personal income tax cuts and the new tax offset is not yet law and currently before the Senate.

Assuming the legislation comes into effect, further changes are planned from 1 July 2022 culminating in the removal of the 37% tax bracket from 1 July 2024. The changes will allow you to earn more before facing a higher tax bracket.

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