

## Introduction

To encourage employers to pay owed Superannuation Guarantee Charge (SGC) and encourage future compliance, the federal government has just passed its Superannuation Guarantee Amnesty (Amnesty). The Amnesty applies from 24 May 2018 until 7 September 2020 to enable employers to correct past SGC non-compliance without the usual penalties.

## Super Obligations and Penalties for Employers

If superannuation obligations are not met by employers, the ATO will impose severe financial penalties. However, the laws governing how to calculate the correct superannuation are complex and many employers make inadvertent errors. Such errors include superannuation not being paid on commissions, bonuses and some expense allowances, as well as late payments. If the correct superannuation contribution is not paid, the employer will be liable for SGC, as well as penalties for noncompliance. SGC payments are non-deductible, increasing the overall cost to the employer significantly. In addition, if superannuation contributions are not made on time, SGC can become payable on overtime payments (which are generally not subject to SGC if paid on time), potentially significantly increasing the cost to employers.

Getting superannuation payments wrong can result in a significant financial cost to the employer and directors can also be personally liable for the company's unpaid SGC. As ATO action can often be triggered by a disgruntled former employee and with no time limits for claims, this constitutes a high-risk area for both employers and directors.

## The Amnesty

The Amnesty seeks to encourage employers who have failed to comply with their SGC obligations in the past to correctly pay their employees' SGC by giving employers a one-off window to make outstanding SGC contributions without added penalties. The Amnesty also allows employers to claim a deduction for catch-up SGC payments made during the Amnesty period.

Employers who have already disclosed unpaid SGC to the ATO do not need to apply for the Amnesty or lodge documentation with the ATO again. However, any employer that comes forward from the 6 March 2020 will have to apply for the Amnesty using the approved form from the ATO. To take advantage of the Amnesty and ensure that catch-up payments are tax deductible, employers must calculate the amount of SGC payable and lodge documentation with the ATO by 11:59 p.m. on 7 September 2020.

The ATO has announced that as a result of the coronavirus disease 2019 (COVID-19), it may be able to make flexible payment arrangements to assist employers in paying the outstanding SGC. However, it should be noted that payments made after 7 September 2020 will not be deductible and if the employer is unable to maintain the payments, the benefits of the amnesty may be withdrawn for the unpaid quarters.

## What Should Employers Do and How Can We Help?

Employers should ensure that they have been compliant with their superannuation obligations between 1992 and 2018 and ensure that going forward, superannuation is paid in accordance with the law.

We can help employers determine whether superannuation has correctly been paid in respect of the various payments and allowances provided to employees. We can also assist employers in taking advantage of the Amnesty and receive tax-deductions for all catch-up payments. We can also aid employers in ensuring that superannuation obligations are met in the future.

While the Amnesty lasts until 7 September 2020, we urge employers to act now and review their compliance with superannuation requirements to determine whether there is a risk that superannuation has been underpaid. Once the Amnesty is over, the ATO should be expected to act aggressively to audit any employers who did not participate in the Amnesty.

## Contacts

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