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# ***Superannuation Guarantee – ATO stepping up compliance reviews***

*November 2017*

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## ***In brief***

The Federal Government is committed to ensuring employers are meeting their superannuation guarantee obligations (paying 9.5 per cent in superannuation to employees) and has provided funding to the Australian Taxation Office (ATO) to pursue non-compliance.

Non-compliance with superannuation guarantee obligations can lead to significant penalties and fees for employers and the loss of tax deductibility for superannuation contributions.

Employers need to ensure they are meeting their obligations by conducting health checks on their super contributions for employees, including assessing contractor arrangements, on-time payments and the inclusion of the right components of employee remuneration when calculating contribution amounts.

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## ***In detail***

In recent months, the ATO has changed its approach to superannuation guarantee (SG) compliance, shifting from a practical compliance approach, to a stricter and far more aggressive approach. This has resulted from funding being provided by the Federal Government to pursue non-compliance and a view that a stronger stance is required to ensure employers are meeting their obligations in compliance with the law. Consequently, the ATO has commenced a program which involves seeking evidence of compliance from employers. Where employers fail to provide evidence, the ATO is conducting full audits.

Previously, where employers were able to proactively identify errors or shortfalls in their SG contributions, they could effectively self-correct without adverse consequences. Now, any employer who has failed to meet their obligations will be subject to the SG shortfall regime, regardless of whether they identify the issue themselves or the ATO identifies the shortfall. Importantly however, employers who do identify their own errors and work with the ATO to correct those errors are more likely to be able to seek a remission of some of the penalties that may be imposed.

The consequences of non-compliance are significant, as outlined below. The best course of action is for employers to conduct a review of their processes and payments to ensure they are complying with their legal obligations. Where an issue is identified, it should be corrected as soon as possible by working with the ATO.

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If an employer receives correspondence from the ATO requesting evidence of compliance or advising of an ATO audit, there's no need to panic. The employer should co-operate with the ATO's requests for a greater chance of a better outcome.

PwC can assist employers with gathering the required evidence, engaging with the ATO or by taking precautionary action by conducting a SG health check.

### **Key features of the SG system**

The following is a summary of the key features of the current SG system:

- 9.5 per cent of Ordinary Times Earnings (OTE) must be contributed to superannuation on behalf of eligible employees, up to a maximum contributions base (AUD52,760 per quarter in the 2017-18 financial year).
- Contributions must be made to a complying superannuation fund.
- Most employees must be allowed to choose their own super fund.
- Contributions must be received by the super fund no later than 28 days after the end of the quarter.
- Contributions are tax deductible to the employer.
- Failure to make correct payments on time can result in an SG shortfall. The consequences of this can include:
  - Loss of tax deductibility.
  - A shortfall percentage applied against salary and wages rather than OTE. Salary and wages generally includes a greater range of remuneration amounts paid to employees and will therefore result in a higher level of contributions having to be made.
  - Imposition of a range of penalties and interest which can include a penalty of up to 200 per cent of the shortfall amount.
  - Directors of companies failing to meet SG obligations can be held personally responsible for unpaid amounts.

### **Where do employers typically get SG wrong?**

- *Incorrect treatment of contractors.* A contractor can still be deemed to be an employee for SG purposes, depending on the nature of the contractual arrangements.
- *Missing various payments from the definition of ordinary times earnings* when calculating 9.5 per cent superannuation contributions, particularly the omission of certain allowances and directors fees.
- *Employers using clearing houses* must ensure that sufficient time is allowed for the clearing house to make payments to the relevant super fund(s) within the 28 day requirement. SG obligations are not satisfied on payment to the clearing house. They are met when the super fund receives the contributions (with the exception of the Small Business Superannuation Clearing House). Most clearing houses require up to ten days to process contributions.

### **Small Business Superannuation Clearing House**

The Small Business Superannuation Clearing House (SBSCH) is a free, on-line service provided by the ATO to assist small business in meeting their SG obligations. It is available to businesses with 19 or fewer employees OR businesses with an annual aggregated turnover of less than AUD10 million.

The SBSCH is the only clearing house where the requirement to pay contributions by 28 days after the end of the quarter is met on payment to the clearing house, rather than on receipt by the super fund.

### **Not sure what to do?**

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If you receive correspondence from the ATO requesting evidence of SG compliance, or advising of an ATO audit, or you would like assistance to conduct your own SG health check, please contact your PwC representative or one of our superannuation specialists.

### ***The Takeaway***

As the consequences of non-compliance with the SG laws are significant, the best course of action is for employers to review of their processes and payments to ensure they are complying with their legal obligations.

### ***Let's talk***

For a deeper discussion of how these issues might affect your business, please contact:

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