
Superannuation Guarantee Amnesty – new incentive encourages employers to self-correct errors

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In brief

Last week, the Government introduced new legislation that provides a one-off 12-month amnesty to encourage employers to voluntarily disclose historical Superannuation Guarantee (SG) non-compliance.

Employers who take advantage of the SG amnesty will receive the following:

- The removal of the administrative penalty of the SG Charge of \$20 per employee per quarter.
- The ability to claim a tax deduction for the payment of underpaid SG during the 12-month amnesty period.
- A full reduction of any penalties and fees that may otherwise apply in relation to historic SG non-compliance (up to 200 per cent of the SG Charge).
- The ability to make payments directly into employees' superannuation funds, rather than channelling these through the Australian Taxation Office (ATO).

In detail

On 24 May 2018, the Federal Government introduced the *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018* into Parliament that, amongst other measures, provides a one-off 12-month amnesty to encourage employers to voluntarily disclose historical SG non-compliance.

Normally, when an employer underpays SG for its employees, a SG Charge arises. This means that penalties are imposed by the ATO, and the payment of the SG Charge is non-deductible for income tax purposes.

The SG amnesty creates a strong financial incentive for employers to correct any historic SG shortfalls, as any employers that voluntarily disclose and pay any SG shortfall during the amnesty period will receive a full reduction in penalties, and also retain full tax deductibility of the contributions made. Therefore, during the amnesty period, employers will only be liable for the SG shortfall and a nominal interest component.

The SG amnesty also provides ancillary amendments to ensure employees are not disadvantaged (breaching the concessional contributions cap) from lump sum payments made in order to address the employer's historical non-compliance.

This amnesty period aligns with several other measures focused on improving SG compliance, including;

- the introduction of Single Touch Payroll (STP)
- director penalties for non-compliance, and
- integrity measures where employees make salary sacrifice super contributions.

Once the legislation before Parliament is enacted, the amnesty period will apply retrospectively from 24 May 2018 through to 23 May 2019 and cover SG contribution entitlements referable to the period from the introduction of the *Superannuation Guarantee Administration Act 1992* on 1 July 1992, through to 31 March 2018, noting that there are no legislative time limit restrictions on retrospectivity for SG non-compliance.

Importantly, employers who choose not to voluntarily disclose any shortfalls within the 12-month amnesty period and are subsequently found not to have met historical SG obligations will not be granted such concessions in the future.

The takeaway

For many industries, SG compliance is a difficult task due to numerous and complex enterprise agreements. In our experience, the most common reasons for non-compliance with SG legislation arise from unintentional errors when setting up pay codes in the payroll system, changing of payroll systems, or as a result of changes to enterprise agreements.

With the proposed SG amnesty and the impending implementation of Single Touch Payroll (STP), now is the ideal time for all employers to make sure they are paying the right amount of superannuation for their employees. The SG Charge financial penalties for non-compliance with SG are severe, and many employers may face reputational risk where trust is lost with their employees.

Given the time-restricted opportunity for disclosure under this amnesty, employers should take steps to immediately initiate a superannuation review, ideally focused on payroll system mapping and supporting processes and controls around the payroll function, insofar as that relates to superannuation.

If you would like further details on such reviews, or to hear more about the SG amnesty, please contact your regular PwC contact, or one of our Employment Tax specialists.

Let's talk

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

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