

# ***Superannuation Guarantee Amnesty - Bill now passed in Parliament!***

24 February 2020

Explore more insights 

## ***In brief***

On 24 February 2020, the Senate passed legislation providing the once-off amnesty for Superannuation Guarantee (SG) non-compliance, backdated to the original amnesty start date of 24 May 2018. This now clears the way for affected employers to take advantage of the amnesty which will cover SG contribution entitlements referable to the period from 1 July 1992 through to 31 March 2018 provided that voluntary disclosure is made to the Australian Taxation Office (ATO) in the period up to six months after the legislation is enacted.

The SG amnesty is a strong encouragement for employers to voluntarily disclose historical SG non-compliance and comes off the back of a number of recent SG developments including the ATO's recent clarification regarding superannuation obligations in respect of annual leave loading, the announcement of data 'health checks' to be applied across Single Touch Payroll (STP) reporting and the more punitive guidance in relation to remission of penalties for 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 AUD20 per employee per quarter.
- The ability to claim a tax deduction for the payment of underpaid SG during the amnesty period.
- A full reduction of penalties that may otherwise apply (up to 200 percent of the SG Charge).
- The ability to pay directly to employees' funds, rather than channelling these through the ATO.

The new law also provides for diminished discretion to reduce penalties after the amnesty period has ended, effectively imposing a minimum 100 percent penalty except in 'exceptional circumstances'.

## ***In detail***

On 24 February 2020, *Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* completed its passage through Parliament and is now awaiting Royal Assent. The Bill introduces a once-off amnesty to encourage employers to voluntarily disclose historical SG non-compliance. The amnesty is backdated so that it applies to voluntary disclosures that are made in the period commencing from the start date of the original amnesty proposal (24 May 2018) until six months after enactment of the legislation (which we expect will occur very soon) in respect of SG contribution entitlements referable to the period from 1 July 1992 through to 31 March 2018.

Normally, when an employer underpays SG for its employees, a SG Charge arises. In addition to remediation on a larger earnings base ('salary or wages' rather than 'ordinary time earnings'), the SG Charge, which also includes an AUD20 administration charge per employee, is non-deductible for income tax purposes, and the ATO is able to impose an additional penalty of up to 200 percent.

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The amnesty creates a strong financial incentive for employers to correct any historical SG shortfalls. Specifically, any employer that voluntarily discloses and pays any SG shortfall subject to the amnesty will receive a SG Charge discount for the AUD20 administration fee, retain full tax-deductibility of the contributions made, and have no penalties imposed. This means that employers will only be liable for the SG shortfall and a nominal interest component in respect of qualifying amnesty disclosures.

The SG amnesty aligns with several other recent measures focused on SG compliance, including:

- the implementation of ATO ‘health-checks’ across STP filings to proactively identify SG breaches;
- integrity measures where employees make salary sacrifice super contributions; and
- updated and more punitive administrative guidance with respect to the remittance of SG penalties.

Once the legislation has received Royal Assent, the amnesty will cover SG contribution entitlements referable to the period from 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 within the amnesty disclosure period and are subsequently found not to have met historical SG obligations will not have access to such concessions, and will have an effective 100 percent penalty imposed, other than in ‘exceptional circumstances’.

### ***The takeaway***

For most employers, SG compliance is challenging with complex remuneration structures and payroll system interactions. In our experience, the most common reasons for SG non-compliance arise from inherent complexities with determining the earnings base, unintentional pay code setup errors, changes to payroll systems, or changes to enterprise agreements or public technical guidance.

Considering the increased public scrutiny regarding wage compliance, the SG amnesty provides a timely opportunity for all employers to make sure they are paying the right amount of SG for their employees. The ability to voluntarily disclose historical SG non-compliance is only available for a limited time, after which severe SG Charge financial penalties will be imposed.

Given the time-restriction and one-off opportunity for disclosure under this amnesty, employers should take steps to immediately initiate a SG review. For employers that have disclosed SG shortfalls to the ATO during the amnesty period, steps should be taken to access the relevant concessions.

For SG shortfall amounts occurring post 1 April 2018 (after the amnesty coverage period ceases) normal SG Charge penalties will apply.

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

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

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