

Superannuation Guarantee Amnesty – It’s back, but will it be passed?

18 September 2019

Explore more insights 

In brief

On 18 September 2019, the Government re-introduced legislation providing a once-off amnesty for Superannuation Guarantee (SG) non-compliance, backdated to the original amnesty start date of 24 May 2018 and now running for a period up to six months after the legislation is enacted.

The re-introduced amnesty encourages employers to voluntarily disclose historical SG non-compliance, and comes on the back of a number of recent SG developments including the Australian Taxation Office’s (ATO) recent clarification regarding superannuation obligations in respect of annual leave loading and the announcement of data ‘health checks’ to be applied across Single Touch Payroll (STP) reporting.

Employers who take advantage of the re-proposed 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 Bill re-introducing the amnesty also provides for diminished discretion to reduce penalties after the amnesty period, effectively imposing a minimum 100 percent penalty except in ‘exceptional circumstances’.

In detail

On 18 September 2019, the Federal Government introduced the *Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* into Parliament that re-introduces a once-off amnesty to encourage employers to voluntarily disclose historical SG non-compliance. The amnesty period is proposed to be backdated to commence from the start date of the original amnesty proposal (24 May 2018), but it is now extended to run up to six months after enactment of the legislation.

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 a 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.

The re-introduced 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 SG Charge discount for the AUD20 administration fee, retain full tax deductibility of the

contributions made, and have no penalties imposed. This means that during the amnesty period, employers will only be liable for the SG shortfall and a nominal interest component.

The re-introduced SG amnesty also provides ancillary amendments to ensure employees are not disadvantaged (breaching the concessional superannuation contributions cap) from lump sum remediation payments.

This re-introduced amnesty aligns with several other 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, draft administrative guidance with respect remittance of SG penalties.

Once the legislation now before Parliament is enacted, the amnesty period 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 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.

With the proposed SG amnesty re-introduced, and the general tightening of the environment around SG non-compliance, 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 are severe.

Given the time-restricted opportunity for disclosure under this amnesty, employers should take steps to immediately initiate a superannuation review. Even where the amnesty does not pass as law, with the increasing focus on SG compliance, such a review is prudent. For employers that have recently disclosed SG shortfalls to the ATO in the amnesty period, steps should be taken to access relevant concessions.

Let's talk

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

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