



Monthly Information Newsletter – Tax & Super

April 2020

Employers get an amnesty for missed super payments

It has been a long time coming, but a planned government amnesty for employers who have missed paying the superannuation guarantee (SG) to their employees has now become law. The amnesty was passed on 6 March 2020 and lasts until 7 September 2020.

The amnesty allows employers to make deductible payments, without penalties, of outstanding superannuation guarantee charge (SGC) amounts if:

- they relate to the period 1 July 1992 until 31 March 2018; and
- they are paid during the amnesty period (24 May 2018 until 11.59pm, 7 September 2020).

However, interest calculated at a rate of 10% a year on the SG shortfall will still apply to compensate employees for these late payments.

The amnesty comes at a time when the ATO's ability to identify unpaid or underpaid SG has greatly increased. This has come about through a number of developments, including better technology and information systems, more frequent reporting requirements for super funds and employers, and a greater supply and cross-referencing of data from institutions and agencies that feeds into the tax system's increasingly utilised pre-fill capabilities.

The incumbent super rules (that is, before the amnesty) impose a penalty on employers who do not pay the minimum amount of compulsory contributions in respect of their employees' ordinary times earnings (OTE) for each quarter.

If the required minimum payments are not made by 28 days after the quarter to which they relate, SGC comprised of the following amounts is payable:

1. SG shortfall – the total of these amounts in respect of each affected employee;
2. interest on those SG shortfalls – currently 10% a year on each individual shortfall from the beginning of the relevant quarter until the date the SG charge is payable;

3. an administration fee – calculated at a rate of \$20 per employee, per quarter; and
4. a penalty – up to 200% of the SGC.

In addition, payments of the SGC will not be deductible.

Importantly, employers should note that the ATO has stated that it will continue to apply the above rules should employers that have unpaid SG obligations not come forward and take advantage of the amnesty.

Superannuation guarantee amnesty benefits

The amnesty provides employers with a number of concessions if they pay qualifying outstanding SGC. If an employer qualifies for the amnesty, they:

- will be able to claim a tax deduction for the SGC amounts paid to the ATO by 7 September 2020
- won't be required to pay the administration component (\$20 per employee per quarter)
- won't have the penalty applied.

If an employer has already been assessed for a quarter, they can amend a previously disclosed SG shortfall. However only newly disclosed, additional amounts will be considered for the benefits of the amnesty.

If an employer has previously disclosed unpaid SG to the ATO in anticipation of the SG amnesty, they don't need to lodge again or apply on the SG amnesty form (more below). The ATO will review all disclosures received between 24 May 2018 and 6 March 2020.

Eligibility

To be eligible for the amnesty, and for qualifying SGC, an employer must meet and fulfil all the following criteria.

They must:

- have not been informed the ATO is examining or intends to examine the SG obligation for the quarter(s) the disclosure relates to
- disclose an SG shortfall for an employee that hasn't already been disclosed to the ATO (or disclose additional amounts of SG shortfall for a quarter previously disclosed)
- disclose for quarter(s) starting from 1 July 1992 to 31 March 2018
- lodge the completed SG amnesty form with the ATO so it is received no later than 7 September 2020.

Note that we can provide you with the necessary form. Also note that you will need to pay the amount owing to the ATO or set up a payment plan after you lodge the SG amnesty form. You need to do this to avoid being disqualified and losing the benefits of the amnesty.

Should an employee ask, the ATO has further stated that should an individual's contribution caps be exceeded due to these catch-up SG payments, discretion will be exercised to disregard the contributions made under the amnesty.

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