

One-off Super Guarantee Amnesty

Employers that have fallen behind with their superannuation guarantee (SG) obligations will have 12 months to “self-correct” under a new amnesty announced late last month.

The ATO estimates that \$2.85 billion is currently owed in late or missing SG payments. Running from 24 May 2018 for 12 months, the amnesty encourages employers to reduce this SG gap by providing relief from the punitive penalties that normally apply to late payments.

Even if you do not believe that your business has an SG underpayment issue, it is worth undertaking a payroll audit to ensure that your payroll calculations are correct, and employees are being paid at a rate that is consistent with their entitlements under



workplace laws and awards.

Qualifying for the amnesty

The amnesty applies to employers that have underpaid or not paid SG for any period from 1 July 1992 up to 31 March 2018.

To qualify for the amnesty, employers must disclose the outstanding SG to the Tax Commissioner using the [SG Amnesty ATO payment form](#) or the [SG Amnesty Fund payment form](#) where the payment has been made directly to the employee's fund. You either pay the full amount owing, or if the business cannot pay the full amount, enter

into a payment plan with the ATO. If you agree to a payment plan and do not meet the payments, the amnesty will no longer apply.

Bear in mind that the amnesty only applies to “voluntary” disclosures. The ATO will continue its compliance activities during the amnesty period so if they discover the underpayment first, full penalties apply. The amnesty also does not apply to amounts that have already been identified as owing or where the employer is subject to an ATO audit.

What do employers pay under the amnesty?

Normally, if an employer fails to meet their quarterly SG payment on time they need to pay the SG charge (SGC) and lodge a Superannuation Guarantee Statement. The SGC applies even if you pay the outstanding SG soon after the deadline.

Employers pay:

- The SGC comprises of:
 - The outstanding SG entitlements (although this component might be higher than what it would have been, had the entitlements been paid on time)
 - Interest of 10% per annum, and
 - An administration fee of \$20 for each employee with a shortfall per quarter
- Penalties of up to 200% of the amount of the underlying SG charge
- A general interest charge if the SGC or penalties are not paid by the due date

On top of this, the SGC amount **is not** deductible - even if you pay the outstanding

amount. That is, if you pay SG late, you can no longer deduct the SG amount even if you bring the payment up to date.

Under the quarterly superannuation guarantee, the interest component is calculated on an employer's quarterly shortfall amount from the first day of the relevant quarter to the date when the SG charge would be payable (not from the date the SG was overdue).

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 - The outstanding SG entitlements
 - Interest of 10% per annum
 - No administration fees
- No penalties
- A general interest charge

An extra benefit of using the amnesty period to catch up is that the SGC amount **is** deductible. The ability to deduct SGC and the reduction in penalties could be significant for employers that have fallen behind with their SG obligations.

Special provisions exist within the legislation to automatically protect employees from inadvertently breaching concessional contribution cap limits if the unpaid SG is paid to the Commissioner and then transferred to the employee's superannuation fund. Where the employer makes the payment directly into the employee's fund, the individual would need to apply to the Commissioner requesting the exercise of discretion to either disregard the concessional contributions or allocate them to another financial year.



Where to from here?

Legislation enabling the amnesty is currently before Parliament and will not become law until at least June 2018. Despite this, the clock is ticking.

If your business has fallen behind on its SG obligations and is eligible for the amnesty, you need to start working through the issues now or contact us to work through the issues for you. There are several calculations that need to be completed and these may take some time to complete.

If your business has engaged any contractors during the period covered by the amnesty, then the arrangements will need to be reviewed as it is common for workers to be classified as employees under the SG provisions even if the parties have agreed that the worker should be treated as a contractor. You cannot contract out of SG obligations.

If you have not undertaken a payroll audit or an audit of rates paid to employees, you should do this within the next 12 months.

If a problem is revealed, you can correct it without excessive penalties applying. If you are uncertain about what Award and pay rates apply to employees, the FairWork Ombudsman's website has a pay calculator or you can contact them online or call them on 13 13 94.

Your essential EOFY checklist

No one wants to pay more tax than they need to or face unnecessary risks. We've compiled a list of our top tips for you.

Donate - If you are going to donate to charity, now is the time. Any donations you make to deductible gift recipients can be deducted this year. Remember, if you received something in return for the money, like goods purchased at a charity auction, you may not be able to claim a deduction for the full payment. There are special rules dealing with this situation that need to be taken into account.

Work related deductions – you can claim a deduction for business expenses you have incurred that have not been paid by your

employer. But be careful, you need to be certain that what you are claiming is a legitimate business expense and able to be claimed. For example, you cannot claim the cost of dry cleaning the clothes you wear to work unless it is protective clothing, a uniform required by the business, or occupation specific clothing (like the checked pants some chefs wear).

To be legitimate, the expense must be for something you need to do your job. Items like laptop bags have been in the news lately because some handbags can be used to carry laptops. This does not mean that your Gucci bag is suddenly deductible. It is really up to you to justify the deduction that you are claiming, keeping records of the actual usage of the item can help with this.

Home office expenses – If you work from home as part of your employment, you may be able to claim items such as phone expenses, running costs for your home, and equipment. Just bear in mind that expenses need to be in proportion to your use of the home for work purposes. If your home is a place of business and you are entitled to claim a deduction for interest expenses or rent, then this will generally impact on your ability to claim the full main residence exemption from CGT when you sell the home.

Earning extra cash from AirBNB style services - The tax treatment of what you earn by renting all or part of your house through AirBNB and similar services is the same as any other residential rental property arrangement.

You must include the rental income in your income tax return, but you can also claim tax deductions for expenses associated to the rental, such as the interest on your home

loan, professional cleaning, fees charged by the facilitator, council rates, and insurance. Expense claims need to be in proportion to the rental, that is, how much of the house is used and for how long. Also, beware that this type of activity can restrict your ability to claim the CGT main residence exemption when you sell the property if it is or has been your home.

Uber – If you drive for Uber or a similar service, the income you earn needs to be declared on your income tax return. Plus, you need to be registered for GST. You can claim expenses for your car that relate to transporting passengers (relative to the kilometres travelled with passengers).

Danger zones – Expense claims that are high on the Australian Taxation Office (ATO) hit list include:

Travel expenses – Problems arise when people make claims for expenses that they did not actually incur. Typically, this happens when someone receives an allowance for travel but does not spend it (they might stay with family or friends instead). While the ATO publishes some reasonable rates each year for food and accommodation expenses, these only provide limited relief from the full record keeping rules. You cannot claim a deduction for the ATO reasonable rate amount if you spent less than this on food and accommodation.

Self-education expenses - Study claimed as self-education must be connected to the income you are currently earning or is likely to result in increased income from existing income earning activities. Merely doing a course while working full time does not make the course deductible.