

Amnesty for Superannuation Guarantee shortfalls - Time now ticking for disclosure

Although it has largely been forgotten in the current Covid-19 turmoil, Parliament earlier in the year passed legislation concerning the Superannuation Guarantee (SG). This new legislation requires urgent attention from any taxpayer that has employees.

This new legislation will provide an amnesty for any SG shortfalls that have not yet been disclosed by a business for periods ending 31 March 2018 and provided that disclosure, and the shortfall superannuation payment is made by 7 September 2020. There is currently no indication that this timeframe will be extended.

However, the bill provides a carrot (in the form of deductions and penalty remission) and a stick – if shortfalls are not disclosed but subsequently identified by the ATO, the ATO will be statutorily barred from remitting penalties unless 'exceptional circumstances' exist. We recommend that businesses urgently review their SG compliance, so that if there is a shortfall, it can be disclosed within the amnesty period.

Benefits if disclosure is made under the amnesty

In summary, the benefits of the amnesty are that if the business voluntarily discloses the liability, and pays the shortfall immediately, the business will not be charged any of the associated administrative fees (\$20 per employee per quarter), retain full tax-deductibility of the contribution made, and have no penalties imposed.

This is a significant benefit over and above the existing penalty remission for voluntary disclosure. The deductibility of the shortfall is a major incentive, and the administrative fee (which could not be waived under the old law) can quickly add up for employers with many employees.

These benefits will only apply to shortfalls that accrued prior to 31 March 2018, and only if disclosure is made by 7 September 2020.

Disclosures relating to the period starting 1 April 2018 will be treated as normal – the super payments are not deductible, administrative fees cannot be waived, but administrative penalties can be remitted to nil.

Tax types

- superannuation guarantee

Tax practice areas

- tax advisory services
- tax audits and reviews
- tax objections

Full penalty if a disclosure is not made in time

If a taxpayer discloses a shortfall of SG for the period ending 31 March 2018 after 7 September 2020, the payment of SG shortfall will not be deductible, will attract the administrative charge of \$20 per employee per quarter, and will be subject to full penalties (100% of the shortfall). Critically, the ATO will be barred by law from remitting any of the penalty unless exceptional circumstances exist – which can be difficult to evidence.

Similarly, if the ATO discovers the shortfall after 7 September 2020, they will not have the discretion to remit any of the penalties, regardless of the factors contributing to the shortfall. Reviews in this area are common given employees can and often will 'dob in' their employers for (perceived or otherwise) shortfalls in superannuation.

We have successfully represented businesses achieve a positive result in disputes that relate to SG shortfalls and have extensive experience in the matter. If you have any issues relating to SG shortfalls, please free to contact us.



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