

The Government's Superannuation Guarantee Amnesty

By Chris Campbell – 30 July 2018

On 24 May 2018 the Federal Government announced a 12 month Superannuation Guarantee (SG) amnesty for employers.

Under the amnesty, employers will have an opportunity to rectify any past mistakes or failure to pay superannuation guarantee contributions, without the usual penalties.

Under the terms of the amnesty, which will be administered by the ATO, any Superannuation Guarantee contribution shortfalls that occurred between 1 July 1992 up to 31 March 2018 can be paid now, and the usual penalties will not be imposed.

In addition, the shortfall amounts paid will be tax deductible to your business. Normally, shortfalls of SG contributions are not tax deductible.

How will it work?

To take advantage of the amnesty, your business is required to report the shortfalls of contributions to the ATO and pay the contributions to either the employee's superannuation fund, or directly to the ATO.

Paying to the ATO may be preferred where the employee concerned no longer works for your business.

The ATO has special forms available for an employer to report the shortfall and claim the amnesty, once the legislation is passed.

Access the ATO website page on the amnesty here: <https://bit.ly/2M87T3h>

When will the amnesty be available?

The amnesty is set to be available for the 12 months from 24 May 2018 to 23 May 2019, however at the time of writing, the legislation has still not passed. The Senate opposition and some worker's unions have been quite vocal about employer's being let off to easy by the proposed amnesty.

Until the legislation is passed, the ATO is bound to apply the existing penalty regime to any reported shortfalls.



Is my business OK?

Even if you believe your business has complied with its Superannuation Guarantee obligations, it may be worthwhile to use this opportunity to undertake a review of your superannuation guarantee records now. If any inadvertent errors or shortfalls are found, you can take advantage of the Government's amnesty offer.

For example, here are some common mistakes that can occur and result in a Superannuation Guarantee shortfall:

1 Timing of contributions

Contributions not received by the superannuation fund or approved clearing house by the 28th day of the month following the end of a quarter do not count for that quarter. Simply paying contributions on or just before that 28th day may not necessarily reach the superannuation fund in time and may only count towards the next quarter. A review now could identify any such gaps in your compliance history.

Similarly, if you paid contributions late, even by only a few days, they do not count for SG compliance in the quarter just ended.

2 Contractors may be caught

Contractors are often overlooked when it comes to compulsory super. Individual (non-company) contractors are specifically included as employees by the Superannuation Guarantee legislation. Not all contractors are caught, there must be an employer/employee relationship. For example, you as employer control and direct the timing and performance of the work of the contractor, like you would for an employee and you are paying for the labor of that particular person i.e. they can't delegate the work to their own employees. Unfortunately, the fact that an individual may have an ABN is not the test of whether a person is or is not a contractor that is caught for SG purposes.

3 Directors are not exempt

A common misconception is that salaried directors of their own company are exempt from complying with the Superannuation Guarantee.

Directors are also employees under the legislation and contributions of 9.5% of any paid salary must also be remitted at the end of each quarter.



If you would like more information or wish to discuss the proposed amnesty, please contact Chris Campbell at Templetons Financial.