

NOVEMBER 2019

TAX ALERT: SUPERANNUATION GUARANTEE AMNESTY

Introduction

During September 2019, the Government re-introduced the *Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* into Parliament, which proposes to introduce a one-off superannuation guarantee (SG) amnesty for employers who have not always complied with their SG obligations.

Those employers who voluntarily disclose their non-compliance to the ATO, relating to any reporting period between 1 July 1992 to 31 March 2018, within the “amnesty period” would be; able to claim income tax deductions for the SG amounts disclosed, will not be charged the administration fee, and will not be subject to any further penalties.

It is currently proposed the “**amnesty period**” (or the time which the ATO is allowing Employers to make voluntary disclosures) will be between: 24 May 2018 and will end six months after the day the legislation is passed.

The amnesty offers an opportunity for all employers to effectively review their past SG contribution obligations and address any areas of non-compliance.

While the amnesty offers incentives for those employers who make voluntary disclosures, there will be substantial penalties imposed on employers who fail to make disclosures during the amnesty period and are subsequently found under ATO review or audit to have shortfalls in their past SG contributions.

Key concessions presented by the re-introduced Bill

It has been proposed that under the one-off SG amnesty, the following concessions will be available:

- Employers will be able to claim tax deductions for payments of SG charge or contributions made during the amnesty period that offset SG charge;
- Employers will have penalties and fees, that may otherwise apply in relation to historical SG non-compliance, reduced to nil; and

The beneficial treatment provided by the amnesty will be available for historical SG non-compliance in a quarter that ends at least 28 days before the start of the amnesty period. Thus, as the amnesty period starts 24 May 2018, the last quarter which can be amended is the quarter ending 31 March 2018.



Employer requirements to qualify for the amnesty

An employer will be eligible for concessional treatment provided by the SG amnesty if:

- During the amnesty period – between 24 May 2018 and will end six months after the day the legislation is passed – the employer discloses to the ATO, in the approved form, information that relates to the amount of SG shortfall that has not previously been disclosed to the ATO;
- The ATO has not, at any time before the disclosure, informed the employer that the ATO is examining (or that the ATO intends to examine) the employer's compliance with an obligation to pay SG charge for a quarter; and
- The employer has not been disqualified from the concessional treatment under the SG amnesty.

Conclusion

We consider that the SG amnesty is a clear indication that the ATO will be increasing their review of employer SG compliance activities and may even consider imposing substantially increased penalties for non-compliance in the future. Therefore, the SG amnesty offers an opportunity for employers to address any historical issues and correct any systemic issues going forward.

The SG amnesty has also been released at a time when the ATO has been seeing significant results arising from their enhanced data matching capabilities and the introduction of Single Touch Payroll (**STP**) reporting. Clearly STP has significantly increased the amount information available to the ATO, due to the real-time reporting of all relevant employee payroll information and superannuation contributions.

This undoubtedly increases an employer's risk of detection of non-compliance, given the volume and detail of data becoming available to the ATO and the increased sophistication of their data matching technology.

It is therefore important to remember that the Director Penalty Regime makes directors of companies personally liable for specified taxation liabilities, including outstanding superannuation guarantee charges, in particular circumstances of non-compliance. Some instances of non-compliance can also impose penalties on the director.

Whilst the SG amnesty legislation has not yet been passed by Parliament, the ATO has stated that the proposed concessions will be applied retrospectively once it has been passed into law.

Please do not hesitate to contact your Lowe Lippmann Relationship Partner if you wish to discuss any of these matters further.



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