

New Law to Offer Superannuation Guarantee Amnesty to Employers

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The Australian Parliament has passed new legislation allowing concessions to those employers who have underpaid Superannuation Guarantee (SG).

Entitled the Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019, the one-off amnesty for historical underpayment of superannuation encourages employers to come forward and pay outstanding amounts. The Bill has now passed both houses and received Royal Assent.

The amnesty period covers any quarters between 1 July 1992 and 31 March 2018. Employers will be exempt from the significantly higher penalties, which will be applied once the amnesty period has ended. If employers do not use the amnesty, higher sanctions will be enforced including a minimum penalty of 100-percent of the SG liability in addition to the shortfall owed. This can be increased to a maximum of 200-percent of the SG liability.

This Bill forms part of the Australian Government's newly legislated integrity measures - Treasury Laws Amendment (2018 Measures No 4) Act 2019. Under this legislation, employers who do not meet their superannuation obligations may face up to 12 months imprisonment.

Currently, the Australian Taxation Office (ATO) imposes five penalties if SG contributions are not paid on time or a SG Charge Statement is lodged after the due date. These sanctions are not tax-deductible and can increase if further false or misleading statements are made. Under the amnesty, the penalties are reduced, and tax deductibility is available – refer to Table 1: Current vs Amnesty SG Penalties.

Table 1: Current vs Amnesty SG Penalties

Penalty Enforced	Current SG Penalties	Amnesty SG Penalties
Unpaid employer super contributions	✓	✓
Per employee quarterly ATO administration (\$20 per quarter, per employee)	✓	X
Notional unpaid earnings on unpaid contributions	✓	✓
ATO imposed penalties that can be between 0% and 200% of the liability*	✓	X
General Interest charge where the SG charge of penalties are not paid by the due date	✓	X
Tax Deductible	X	✓

**Note: This changes to 100% and 200% of the liability once the amnesty is over.*

Whilst the employer is still required to pay all superannuation amounts owing and the notional interest, under the new Bill, penalties for late payment will not be applied.

If an application for amnesty is lodged and an employer cannot pay the SG shortfall and notional interest, they will need to enter negotiations with the ATO to establish a payment arrangement. Failure to do so means they will lose the benefits from the amnesty.



Employers have from 26 May 2020 to 7 September 2020 to self-report SG non-compliance and apply to the ATO for amnesty. The application is to be in an approved form that, is available from the ATO website.

With the introduction of SuperStream and more recently Single-Touch Payroll (STP), wage information including tax and superannuation is being directly reported to the ATO. This means employers are being held accountable in meeting lodgement and payment deadlines. If you have outstanding superannuation obligations, please contact our office so we can assist you in taking advantage of this one-off opportunity before significant penalties apply.

For further information or updates about the ATO's proposed Superannuation Guarantee Amnesty, visit their [website](#).

If you have any questions or would like more information, please contact our office:

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