

# Re-Introduced Superannuation Guarantee Amnesty

The Federal Government have legislated a one-off Amnesty where employers will have the opportunity to disclose any non-compliance to the ATO voluntarily. In return, employers are able to claim income tax deductions for the superannuation guarantee charge (SGC) amounts disclosed, pay no administration fees and will not be subjected to further penalties.

## Amnesty Terms

The original superannuation guarantee (SG) Amnesty was announced by the Government in May 2018 to give employers the chance to correct any unpaid SG amounts dating back to 1992. While the start date is still 24 May 2018, the Amnesty will end 7 September 2020.

The Amnesty will apply to shortfalls for the period commencing 1 July 1992 and ending 31 March 2018. Any SG non-compliance in a quarter starting on or after 1 April 2018 will not be eligible for the Amnesty.

## Who is eligible to use the Amnesty?

To be eligible for the Amnesty, an employer must:

- voluntarily disclose SG shortfall amounts, relating to any period from 1 July 1992 to 31 March 2018, within the Amnesty period (24 May 2018 to 7 September 2020);
- disclose SG shortfall amounts that have not previously been identified;
- make the payment of the SG shortfall amount during the Amnesty period; and
- not been already informed that the ATO is examining (or that it intends to investigate) the employer's SG compliance for the relevant quarter.

## What are the benefits to the employer?

Under s. 17 of the *Superannuation Guarantee (Administration) Act 1992*, if an employer has one or more individual SG shortfalls for a quarter, the employer is liable for the SG charge (SGC) comprising:

- the total of the employer's SG shortfalls for the quarter;
- the nominal interest component for the quarter (imposed at the rate of 10 per cent calculated from the start of the quarter); and
- the administration component for the quarter (being \$20 per employee per quarter).

Payments of the above amounts are non-deductible. The employer is also liable for the general interest charge (GIC) on the unpaid amount and could be up for a Part 7 penalty for failing to lodge a SG statement, equal to double the amount of the SGC statement.

Under the Amnesty, where a complying SG statement is lodged and meets the above eligibility criteria, the following will apply to the employer:

- the administration component of \$20 per employee per quarter will not be payable;
- the Part 7 penalty will not apply to payments made during the Amnesty period; and
- catch-up SG payments made during the Amnesty period will be tax-deductible.

If the employer enters into a payment plan with the ATO that extends beyond the end of the Amnesty period, any payment made after that date will not be deductible.

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### Disclaimer

The information provided in this information sheet does not constitute advice. The information is of a general nature only and does not take into account your individual financial situation. It should not be used, relied upon, or treated as a substitute for specific professional advice. We recommend that you contact Brentnalls SA before making any decision to discuss your particular requirements or circumstances.

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## An Example

The White family ran a small business through a company structure for the years 2015, 2016 & 2017. During this period there were two individuals employed, being Walter and Skyler. Salaries paid to Walter & Skyler were \$50,000 each per annum, with no superannuation guarantee payments made during this time.

On advice from their accountant, the White's lodged SG statements to capture the missed super. The total of the super guarantee not paid amounted to \$28,500 (\$50,000 x 2 people x 3 years x 9.5%). Calculations of the nominal interest component from 1 January 2015 totalled \$11,700, while the administration component was \$480 meaning the total SGC payable was \$40,680.

However, as the SG statement was lodged during the Amnesty, with the payment made before the end of the Amnesty, the amount was deductible, and a tax saving of \$11,055 was made, based on the corporate tax rate of 27.5% as seen in the below table:

SGC Component	No Amnesty	Amnesty
Superannuation Guarantee	\$28,500	\$28,500
Nominal Interest	\$11,700	\$11,700
Administration Fee	\$480	-
<b>Total SGC Payable</b>	<b>\$40,680</b>	<b>\$40,200</b>
Amount Deductible	-	\$40,200
Corporate Tax Rate	27.5%	27.5%
<b>Tax Saving</b>	<b>-</b>	<b>\$11,055</b>
<b>After Tax Cost to Business</b>	<b>\$40,680</b>	<b>\$29,145</b>

## How are employees affected?

The employees will receive the SG shortfall, the nominal interest component and the GIC that accrues on the SG shortfall amount. If an employee were to exceed their concessional contributions cap (\$25,000 for 2020) and it was due to contributions made under the Amnesty, the Commissioner may exercise his discretion to disregard these contributions without the need for the employee to apply for this discretion.

## What happens after the Amnesty?

The day after the Amnesty period has ended, the Commissioner's ability to remit Part 7 penalties on an employer that has failed to disclose information will be restricted. The Commissioner will not be able to remit penalties below 100 per cent of the SG charge payable. This restriction is intended to strengthen the operation of the Amnesty by providing employers with higher minimum penalties for failing to come forward during the Amnesty.

With the Amnesty now law, it is expected that the ATO will communicate to employers that have already paid the full SGC how it would refund the administration component and Part 7 penalty to those employers that are eligible for the Amnesty. Depending on the timing, employers may also need to amend their tax returns to claim a tax deduction for the payment.

## How can Brentnalls SA help you?

If you would like further information or to see if the Amnesty applies to your situation, please contact our office and ask to speak to one of our professional advisors.

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