

Deadline looms for Super Guarantee amnesty

Employers have just a couple of weeks to take up the Australian Tax Office's Superannuation Guarantee amnesty or face the penalty for any unpaid super. Letters and emails are currently being sent to [860,000 businesses](#) to put them on notice of the looming deadline.

The ATO estimates employees [are owed \\$2.3 billion](#) in unpaid super.

In a previous [JS Matters article](#), we explained that a one-off amnesty was implemented by the ATO to encourage employers to self-correct any historical non-compliance around non-payment of the Superannuation Guarantee (SG) for the period between July 1, 1992 and March 31, 2018. The amnesty – which allows employers to make a voluntary disclosure about any SG shortfall to the ATO – finishes on September 7 and will not be extended.

With the deadline fast approaching, employers need to disclose any shortfalls as after the amnesty is finished, if they haven't come forward, they will face a minimum penalty of 100 per cent of the unpaid super balance and will be required to remediate employees with interest. Any amnesty amounts paid before September 7, 2020 will be tax deductible.

However, Superannuation Minister Jane Hume told [The Australian Financial Review](#) that "we haven't see that take-up of it that we would like". She declined to provide details on the number of employers who had come forward.

To be eligible for the amnesty:

- The unpaid super must be for a quarter between July 1, 1992 and March 31, 2018
- The shortfall cannot have already been disclosed to the ATO
- The ATO cannot already be examining the shortfall.

Australian Small Business and Family Enterprise Ombudsman Kate Carnell says to qualify for the amnesty, employers have to come forward voluntarily, without direct prompting from the ATO and agree to pay all employee entitlements plus interest.

"Most small businesses already do the right thing, with 95 per cent complying," she says. "The amnesty will give small businesses a chance to ensure they are compliant because all Australian workers deserve to be paid the entitlements they are owed. If you don't disclose unpaid super under the amnesty and you are found to have been non-compliant, you will face a minimum penalty of 100 per cent of the superannuation owed, have to pay \$20 administration fee per employee per quarter and you cannot deduct any payments made."

COVID struggles



Trent Devine, Partner, Jirsch Sutherland

Jirsch Sutherland Partner Trent Devine says many businesses are continuing to struggle with cash flow as a result of COVID-19 and suspects there will likely be a large number unable to pay their super commitments.

“It’s important to remember that non-payment of super is part of the ATO’s Director Penalty Notice regime, so there is potential for directors to be personally liable for a company’s unpaid super,” Devine says. “After three months, the unpaid super is payable to the ATO as a Superannuation Guarantee Charge and the ATO can issue a Director Penalty Notice for the SGC.”

Devine says while COVID-19 is causing havoc to so many businesses, directors need to be very wary of all the consequences to avoid opening themselves up to a breach of duty and advises any directors that have concerns to call their adviser.

“Even with only a couple of weeks to go before the amnesty period ends, there is still time to talk with your professional adviser or accountant to see what action you can take,” he says. “The ATO has said if a business is affected by COVID-19 there are options available, such as flexible payment plans that can help ensure businesses continue to qualify for the benefits of the amnesty.”

Devine also warns that employers who think they won’t be caught out should think again.

“The ATO is rolling out its single touch payroll data reporting system and this means any underpayments are highly likely to be found,” he says. “The penalties applicable if the ATO finds an employer has deliberately withheld that they owe their employees super, could very easily cripple the business. My advice is if you are in the situation where you owe super from even years ago, then you need to take action to pay it or enter into an arrangement where you pay it back over time.”

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