

Client Discussion Paper

SG amnesty bill passes both houses and is set to become law

The [Treasury Laws Amendment \(Recovering Unpaid Superannuation\) Bill 2019](#) has been passed by the Senate without amendment and is set to become law.

The bill contains measures that allow employers to make deductible payments, without penalties, of outstanding superannuation guarantee charge (SGC) amounts if:

- they relate to the period 1 July 1992 until 31 March 2018; and
- they are paid during the amnesty period (24 May 2018 until 6 months after the date of royal assent — not received at time of writing).

However, interest calculated at a rate of 10% a year on the SG shortfall will still apply to compensate employees for late payment.

Background

The *Superannuation Guarantee Administration Act 1992* (SGAA 1992) imposes a penalty on employers who do not pay the minimum amount of “superannuation guarantee” contributions in respect of their employees’ ordinary times earnings (OTE) for each quarter.

If the required minimum payments are not made by 28 days after the quarter to which they relate, a non-deductible SGC comprised of the following amounts is payable:

1. **SG shortfall** – the total of these amounts in respect of each affected employee;
2. **interest on those SG shortfalls** - currently 10% per annum on each individual shortfall from the beginning of the relevant quarter until the date the SG charge is payable; and
3. **an administration fee** - calculated at a rate of \$20 per employee, per quarter.

Superannuation guarantee amnesty benefits

The amnesty provides employers with a number of concessions if they pay qualifying outstanding SGC that:

- relates to the period 1 July 1992 until 31 March 2018; and
- is paid during the amnesty period (see above).

The concessions provided by the amnesty include:

1. **The SGC (comprised of the SG shortfall amounts, interest and the administration fee) will be deductible to the employer:** Normally, payment of the SGC is non-deductible.
2. **The administration fee (one of the three components of the SGC outlined above) will be waived:** Normally, this is calculated at a rate of \$20 per employee, per quarter.
3. **No penalties will be applied for failing to lodge an SG statement:** In usual circumstances this can be up to 200% of the SGC amount.

A further incentive to make payments during the amnesty period is that the minimum penalty applying to SGC for quarters covered by the amnesty (that is, undisclosed shortfalls during the period 1 July 1992 until 31 March 2018) will be 100% if they are later uncovered.

The Commissioner will not generally have the discretion to remit the penalty to below 100% of the SGC.

4. **The SG amount will be automatically excluded from the calculation of the employee’s concessional contributions cap:** This avoids a potential additional income tax liability for the employee as concessional contributions above the individual’s concessional contributions cap are included in the individual’s assessable income and assessed at their marginal tax rate.

5. **The SG amount will be automatically excluded from the calculation of the employee's "low tax contributed amounts" for the purposes of additional tax under Division 293 of the Income Tax Assessment Act 1997:** This potentially avoids an additional 15% tax liability on superannuation contributions that is imposed when an individual's income for Division 293 purposes exceeds the relevant threshold (currently \$250,000).

Qualification criteria:

Note that the benefits under the amnesty are only available if:

1. The Commissioner has not previously advised the employer that they are examining, or intending to examine, the employer's compliance with SGC;
2. The SG shortfalls have not previously been disclosed to the Commissioner;
3. The information is disclosed to the Commissioner in the approved form;
4. The employer has not been disqualified from the beneficial treatment under the amnesty.