Inside

Super Guarantee Amnesty Resurrected

The Government has resurrected the Superannuation Guarantee (SG) amnesty giving employers that have fallen behind with their SG obligations the ability to "self-correct." This time however, the incentive of the amnesty is strengthened by harsh penalties for those that fail to take action.

Originally announced in May 2018 and running between 24 May 2018 until 23 May 2019, the amnesty failed to secure its passage through Parliament after facing a backlash from those that believed the amnesty was too lenient on recalcitrant employers.

Since the original announcement, the Government reports that over 7,000 employers have come forward to voluntarily disclose historical unpaid super. The SG tax gap is estimated at around $2.85 billion in late or missing SG payments.

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When does the amnesty apply?

Legislation enabling the amnesty is currently before Parliament and if enacted, will apply from the date of the original amnesty announcement, 24 May 2018, until 6 months after the legislation has passed Parliament. Employers will have this period to voluntarily disclose underpaid or unpaid SG payment to the Commissioner of Taxation.

The amnesty applies to historical underpaid or unpaid SG for any period up to the March 2018 quarter.

Qualifying for the amnesty

To qualify for the amnesty, employers must disclose the outstanding SG to the Tax Commissioner. You either pay the full amount owing, or if the business cannot pay the full amount, enter into a payment plan with the ATO. If you agree to a payment plan and do not meet the payments, the amnesty will no longer apply.

Keep in mind that the amnesty only applies to "voluntary" disclosures. The ATO will continue its compliance activities during the amnesty period so if they discover the underpayment first, full penalties apply. The amnesty also does not apply to amounts that have already been identified as owing or where the employer is subject to an ATO audit.

What do employers pay under the amnesty?

Normally, if an employer fails to meet their quarterly SG payment on time, they pay the SG charge (SGC) and lodge a Superannuation Guarantee Statement. The SGC applies even if you pay the outstanding SG soon after the deadline.

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What employers pay for failing to meet SG obligations

No Amnesty	Amnesty
SGC comprised of: • The outstanding SG entitlements (this component might be higher than what it would have been had the entitlements been paid on time) • Interest of 10% per annum • An administration fee of $20 for each employee with a shortfall per quarter	SGC comprised of: • The outstanding SG entitlements • Interest of 10% per annum • **No administration fees**
Penalties of up to 200% of the amount of the underlying SG charge (minimum 100% for quarters covered by the amnesty)	**No penalties**
A general interest charge if the SGC or penalties are not paid by the due date	A general interest charge
SGC amount is **not deductible** - even if you pay the outstanding amount	SGC amount is **deductible**

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Under the quarterly superannuation guarantee, the interest component is calculated on an employer's quarterly shortfall amount from the first day of the relevant quarter to the date when the SG charge would be payable (not from the date the SG was overdue).

The ability to deduct SGC and the reduction in penalties under the amnesty could be significant for employers that have fallen behind with their SG obligations.

If SG is paid late, special provisions exist within the legislation to automatically protect employees from inadvertently breaching concessional contribution cap limits if the unpaid SG is paid to the Commissioner and then transferred to the employee's superannuation fund. Where the employer makes the payment directly into the employee's fund, the individual would need to apply to the Commissioner requesting the exercise of discretion to either disregard the concessional contributions or allocate them to another financial year.

What happens if you do not take advantage of the amnesty?

If an employer fails to take advantage of the amnesty and is found to have underpaid employee SG, they are required to pay the SGC which includes penalties of up to 200%. Outside of the amnesty period, the ATO has the power to reduce the penalty in whole or part. However, the legislation enabling the amnesty imposes tougher penalties on employers that do not voluntarily correct underpaid or unpaid SG by removing the ATO's capacity to reduce these penalties below 100%. In effect, the Commissioner loses the power for leniency even in cases where an employer has made a genuine mistake.

Where to from here?

Even if you do not believe that your business has an SG underpayment issue, it is worth undertaking a payroll audit to ensure that your payroll calculations are correct, and employees are being paid at a rate that is consistent with their entitlements under workplace laws and awards.

If your business has fallen behind on its SG obligations and is eligible for the amnesty, you need to start working through the issues now or contact us to work through the issues for you. There are several calculations that need to be completed and these may take some time to complete.

If your business has engaged any contractors during the period covered by the amnesty, then the arrangements will need to be reviewed as it is common for workers to be classified as employees under the SG provisions even if the parties have agreed that the worker should be treated as a contractor. You cannot contract out of SG obligations.

If a problem is revealed, you can correct it without excessive penalties applying under the amnesty. If you are uncertain about what award and pay rates apply to employees, the FairWork Ombudsman's website has a pay calculator or you can contact them online or call them on 13 13 94.

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Towards Zero Interest Rates (and what it means to you)

The Reserve Bank of Australia is widely tipped to reduce interest rates again to historic lows. Easton Wealth economist Emmanuel Calligeris explores the impact.

Australia and world volatility

The ongoing trade war between the US and China has dominated financial market movements recently. The last two trading months have seen increased market volatility. In July, share markets moved higher because interest rate markets moved lower to reflect lower economic growth thanks to the trade war. There have however been other issues causing market volatility including a negative economic growth reading in Germany in the second quarter and the Bundesbank – the Central Bank - warning of a possible repeat in the third quarter. This is important because two quarters of negative growth in a row is how we define a recession. It could well be that Germany – Europe's largest economy, has slipped into recession and the question then becomes what will happen to the rest of Europe? As we head into recession, unemployment rises, investment falls and governments are forced to spend money to try to revive the economy as interest rates fall. The good news is that government spending is likely to add 0.7% to growth in the next year which should help the region avoid recession. The risk to Europe is a no-deal Brexit. Brexit has caused great volatility in the European Union. A No-Deal Brexit would likely hurt the exports of France, Germany and Holland.

Japan's GDP growth is weak as export growth has slowed. In Hong Kong, the unrest has the potential to deteriorate further. The riots have dented consumer spending which is a large component of economic growth for developed countries like Hong Kong. In Australia, economic growth has slowed also as households struggling with record debt and weak wage growth cut back on spending.

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Two key supports have been high commodity prices and infrastructure investment. The iron ore price remained high because of supply disruptions caused by the tailings dam disaster in Brazil. However, that is now falling away as iron-ore supply disruptions end and the price returns to more normal levels. It means that our export income from iron ore will be less of a driver of growth next year and unless the drought breaks, the slack is unlikely to be picked up by rural exports.

In early August, the further escalation of the trade war saw share markets in Australia and the US weaken and the interest rate on Australian term deposits and bonds fall to their lowest level in history. If interest rates stay low, government spending will gain importance as the driver of future growth.

The slowdown in global growth saw US interest rates adjust quickly. Traditionally, a signal of a high probability of recession in the US occurs when the yield (interest rate) on the 10-year bond, falls below the yield on the 2-year bond. This is also known a negative yield curve. Whilst the probability of recession is not guaranteed, the negative yield curve does suggest that the US Federal Reserve are likely to reduce its interest rate substantially over the course of the next year. In Australia, the Reserve Bank eased the official cash rate twice to an historic low of 1%. The RBA believes that the level of wages growth does not threaten its inflation outlook and the economy can operate at a much lower rate of unemployment. This essentially means that monetary policy (interest rates) can be lower for longer without overheating the economy. That said, the outlook is for interest rates to move even lower in late 2019 and early 2020 with some forecasters suggesting that the rate will reach just 0.50% by that time. Term deposit rates have moved lower to reflect the low cash rate.

The real impact of low interest rates

Low rates have produced a dilemma for savers. As interest rates fall, more and more capital is required to sustain the same level of income. This is illustrated in the table below.

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Capital prices and interest rates		
Investment amount ($)	**Fixed income ($)**	**Interest rate**
500,000.00	50,000	10%
625,000.00	50,000	8%
833,333.33	50,000	6%
1,250,000.00	50,000	4%
2,500,000.00	50,000	2%

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The table shows that at a 10% interest rate, an investor could generate income of $50,000 with a capital or investment amount of $500,000. If the interest rate falls to 6%, the capital required to generate the same $50,000 of income is approximately $833,000 and at a 2% interest rate, an investor would require $2.5 million to generate the same amount of income.

Looking at it another way, if you own an investment that is capable of generating an income of $50,000 per annum, then the lower the interest rate, the more valuable the investment becomes. This has been the case for bonds over the last 30 years and property and shares that have maintained their dividend growth in the last 10 years since the global financial crisis. An investor that has had the same $500,000 invested without capital growth (like a term deposit) will now be generating income of just $10,000 at 2%.

Investing in a low return environment

To date, investors in property and share markets have been happy about the low and declining interest rates. They have paid more attention to the market gains that have resulted from falling rates than the falling future rates of return. We now find ourselves in a situation where future returns are likely to be low and are confronted with the question of where to invest in this low return world. The easiest way to achieve higher returns is to increase investment in those asset classes that traditionally offer them – namely domestic and international shares and property. However, in seeking higher returns, investors must assume higher risk. It is important that the overall portfolio balance is not tilted too far and investors remain disciplined from an asset allocation perspective. If fiscal spending does increase in the future, a bias towards (income generating) infrastructure may be appropriate over the near term.

In terms of stock selection, there has been much press that recent rises in property and share prices has seen these asset classes reach unjustifiable valuations. As a result, some experts in stock selection that have taken this view have underperformed their respective indices - in some cases markedly so. We believe that combining low-cost index funds with carefully selected actively managed funds not only leads to better relative performance, but also reduces costs. Shares and property are fully priced in the short term but should remain part of a well-diversified investment portfolio. Investors should be cautious near term but look to add to exposures into market weakness. Shares and property are likely to provide moderate growth with a good level of dividends over the next few years - lower returns in a low growth low inflation world will likely be the norm.

This information is general information only and hasn't taken your personal circumstances into account. It is important that your personal circumstances are taken into account before making any financial decision and we recommend you seek detailed and specific advice from a suitably qualified adviser before acting on this information.

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Tax alert: Distributions to non-resident beneficiaries

The ATO's recently released interpretation of the tax treatment of capital gains distributed by an Australian discretionary trust to non-resident beneficiaries will have a significant negative impact for some.

Two new determinations released by the ATO deal with the complex and technical issues that arise when a resident discretionary trust makes a distribution of capital gains to non-resident beneficiaries. The ATO's view is that in some circumstances, non-resident beneficiaries can be taxed in Australia on gains relating to foreign assets, which would not have been taxed in Australia had they been made by the beneficiary directly.

The ATO's position will be counterintuitive for many as there is a Capital Gains Tax (CGT) exemption for non-resident taxpayers for assets that are not classified as taxable Australian property (TAP). This exemption means that in some circumstances, capital gains and losses are disregarded for non-residents.

The ATO's view is that this exemption does not apply to distributions from discretionary trusts even though beneficiaries of a trust are generally treated for tax purposes as if they had made capital gains personally. What this means is that if a resident discretionary trust makes a capital gain, then the ATO expects that this will be taxed in Australia, even if the gain is distributed to a non-resident beneficiary, even if the gain does not relate to TAP and even if the gain has a foreign source. Given that non-resident beneficiaries will be taxed at non-resident tax rates and may not have access to the full CGT discount, it will be important for trustees to consider this carefully when deciding on distributions for trusts that have a mixture of resident and non-resident beneficiaries.

The ATO's determinations do not take into account the possible application of any double tax agreements. This is another issue that would need to be considered to reach a conclusion on how distributions are likely to be taxed in the hands of non-resident beneficiaries.

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Quote of the month

"The only people who see the whole picture', he murmured, 'are the ones who step out of the frame"

Salman Rushdie
The Ground Beneath Her Feet