

### SUPER GUARANTEE—WHAT HAPPENS WHEN YOU GET IT WRONG



The ATO receives around 20,000 reports each year from people who believe their employer has either not paid or underpaid compulsory superannuation guarantee (SG). In 2015-16 the ATO investigated 21,000 cases raising \$670 million in SG and penalties.

The ATO's own risk assessments suggest that between 11% and 20% of employers could be non-compliant with their SG obligations and that non-compliance is "endemic, especially in small businesses and industries where a large number of cash transactions and contracting arrangements occur."

Celebrity chefs are the latest in a line of employers to publicly fall foul of the rules - one for allegedly inventing details on employee payslips and another for miscalculating wages. But what happens if your business gets SG compliance wrong?

Under the superannuation guarantee legislation, every Australian employer has an obligation to pay 9.5% Superannuation Guarantee Levy for their employees unless the employee falls within a specific exemption. SG is calculated on Ordinary Times Earnings - which is salary and wages including things like commissions, shift loadings and allowances, but not overtime payments.

Employers that fail to make their superannuation guarantee payments on time need to 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.

The SGC is particularly painful for employers because it is comprised of:

- The employee's superannuation guarantee shortfall amount - so, all of the superannuation guarantee owing
- Interest of 10% per annum, and
- An administration fee of \$20 for each employee with a shortfall per quarter.

Unlike normal superannuation guarantee contributions, SGC amounts are not deductible, even if you pay the outstanding amount. That is, if you pay SG late, you can no longer deduct the SG amount even if you bring the payment up to date.

And, the calculation for SGC is different to how you calculate SG. The SGC is calculated using the employee's salary or wages rather than their ordinary time earnings. An employee's salary and wages may be higher than their ordinary time earnings particularly if you have workers who are paid for overtime.

Under the quarterly superannuation guarantee, the interest component will be calculated on an employer's quarterly shortfall amount from the first day of the relevant quarter to the date when the superannuation guarantee charge would be payable.

## SUPER GUARANTEE—WHAT HAPPENS WHEN YOU GET IT WRONG

The penalties imposed on the employer for failing to meet SG obligations on time might seem harsh, but they have been designed that way on purpose. This is really money that belongs to the employee and should be sitting in their superannuation fund earning further income to support the employee in their retirement.

Directors are personally liable for unpaid SG Where attempts have failed to recover superannuation guarantee from the employer, the directors of a company automatically become personally liable for a penalty equal to the unpaid amount.

Directors who receive penalty notices need to take action to deal with this – speaking with a legal adviser or accountant is a good starting point.

If you are uncertain about your SG obligations or would like a compliance audit of this and other key risk areas of your business, give us a call.

---

For information about our services, latest news and articles, calculators and models, and useful links to other resources, please visit our website: [www.agpe.com.au](http://www.agpe.com.au)

*Clients should not act only on the basis of the material contained in these notes as the contents are of a general nature only and may be liable to misinterpretation in particular cases or circumstances.*

*The information in this document is current as at 1 September 2017.*