YOUR KNOWLEDGE

Directors on 'hit list' for not paying employee super

Proposed legislation would see the ATO pursue criminal charges against Directors who fail to meet their superannuation guarantee (SG) obligations.

An analysis by Industry Super Australia submitted to the Economics References Committee into *Wage Theft and Superannuation Guarantee Non-compliance*, indicates that employers failed to pay an aggregate amount of $5.6 billion in SG contributions in 2013-14.

On average, that represents 2.76 million affected employees, with an average amount of over $2,000 lost per person in a single year. 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." At present, under reporting or non-payment of SG is usually discovered when the employer misses the quarterly payment schedule or from the ATO's hotline.

New legislation seeks to introduce a series of changes to how employers interact with the SG system and give some teeth to the ATO to pursue recalcitrant employers. The new rules, if passed by Parliament, generally come into effect from 1 July 2018.

The key changes include:

The ATO can force you to be educated about your SG obligations

At present, if an employer fails to meet their quarterly SG payment on time they 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 SG owing
- Interest of 10% per annum, and
- An administration fee of $20 for each employee with a shortfall per quarter.

Unlike normal SG 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 SG charge would be payable. Where attempts have failed to recover SG from the employer, the directors of a company automatically become personally liable for a penalty equal to the unpaid amount.

Under the proposed rules, the ATO will also have the ability to issue directions to an employer who fails to comply with their obligations. The Commissioner can direct an employer to undertake an approved course relating to their SG obligations where the Commissioner reasonably believes there has been a failure by the employer to comply with their SG obligations, and, of course, a direction to pay unpaid and overdue liabilities within a certain timeframe.

Criminal penalties for failure to comply with a direction to pay

Employers who fail to comply with a directive from the Commissioner to pay an outstanding SG liability face fines and up to 12 months in prison. Before hauling anyone off to prison the ATO has to consider the severity of the contravention including:

- The employer's history of compliance (superannuation and general tax obligations)
- The amount of unpaid super relative to the employer's size
- And steps taken by the employer to pay the liability, and
- Any matters the "Commissioner considers relevant".

The ATO will tell employees if an employer is under paying or not paying SG

The proposed new rules will allow the ATO to tell current and former employees about the failure (or suspected failure) of an employer to comply with their SG obligations. The ATO can also advise the employees what action has been taken by the ATO to recover their SG. This disclosure cannot relate to the general financial affairs of the employer.

Extension of Single Touch Payroll to all employers

Single Touch Payroll – the direct reporting of salary and wages, PAYG withholding and superannuation contribution information to the ATO – will be compulsory from 1 July 2018 for employers with 20 or more employees. Under the proposed rules, this system would be extended to all employers by 1 July 2019. In addition, Single Touch Reporting will extend to the reporting of salary scarified amounts.

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

KNOWLEDGE SHOP

YOUR KNOWLEDGE

What's changing in 2018?

1 January 2018

- **Vacancy fees for foreign acquisitions of residential land** - An annual vacancy fee imposed on foreign owners of residential real estate if the property is not occupied or genuinely available on the rental market for at least 183 days in a particular 12 month period. Foreign owners can avoid the fee by living in the property (or have a family member live in the property), leasing the property, or making it available for rent, for a total of 183 days in a 12 month period. Short term letting arrangements often won't be sufficient to avoid the levy.
- **CGT concession for investments in affordable housing** - The CGT discount will be increased for individuals who choose to invest in affordable housing. The current 50% discount will increase by 10% to 60% for resident individuals who elect to invest in qualifying affordable housing. Non-residents are not generally eligible for the CGT discount. *This change is not yet legislated.*

1 July 2018

- **Super concessions for downsizers come into effect** - If you are over 65, have held your home for 10 years or more and are looking to sell, you can contribute a lump sum of up to $300,000 per person to superannuation without being restricted by the existing non-concessional contribution caps - $100,000 subject to your total superannuation balance - or age restrictions.
- **Using super to save for your first home** - The first home savers scheme will enable first-home buyers to save for a deposit inside their superannuation account, attracting the tax incentives and some of the earnings benefits of superannuation. Home savers can make voluntary concessional contributions (for example by salary sacrificing) or non-concessional contributions (voluntary after-tax contributions) of $15,000 a year within existing caps, up to a total of $30,000. When you are ready to buy a house, you can withdraw those contributions along with any deemed earnings in order to help fund a deposit on your first home.
- **GST on low value imported goods** - GST will apply to retail sales of low value physical goods ($1,000 or less) that have been imported into Australia and sold to consumers.
- **Who pays the GST on residential property & subdivisions -** Property developers will no longer manage the GST on sales of newly constructed residential properties or new subdivisions. Instead, the Government will require purchasers to remit the GST directly to the ATO as part of the settlement process. *This change is not yet legislated.*
- **$20k immediate deductions ends** – The $20,000 immediate deduction threshold for assets purchased by businesses with an aggregated turnover of under $10 million ends 30 June 2018.
- **Taxable payments reporting system extended to couriers & cleaners** - Businesses in the courier and cleaning industries will need to collect information from 1 July 2018, with the first annual report required to be lodged in August 2019.
- **Single Touch Payroll –** Single Touch Payroll reporting starts for employers with 20 or more employees. Employers will report payments such as salaries and wages, PAYG withholding and super information directly to the ATO from their payroll system at the same time they pay their employees.
- **Closing salary sacrifice loopholes to reduce super guarantee -** Loopholes that enable employers to reduce the Superannuation Guarantee (SG) contributions owed to employees by using salary sacrifice contributions will be closed. *This change is not yet legislated.*
- **Access to reduced company tax rate limited** - Limits access to the 27.5% company tax rate by replacing the existing 'carrying on a business test' with a passive income test. Under the new rules, a company will not be able to access the reduced company tax rate if more than 80% its assessable income is passive in nature. *This change is not yet legislated.*
- **Wine equalisation tax rebate tightened eligibility** - Wine producers will be required to own at least 85% of the grapes used to make the wine throughout the winemaking process and brand wine with a trademark.

Quote of the month

"When you reach the end of your rope, tie a knot in it and hang on."

Franklin D. Roosevelt

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