

New Practice Statement for Superannuation Guarantee

August 2021

Superannuation Guarantee Update

The Australian Taxation Office has released a draft *Practice Statement Law Administration (PS LA 2021/D1)* on 29 July 2021, which sets out the proposed guidelines for remission of the additional Superannuation Guarantee Charge (SGC) imposed under Part 7 (subsection 59(1)) of the *Superannuation Guarantee (Administration) Act 1992*.

Where an employer does not fund the minimum level of Superannuation Guarantee (SG), the employer is liable to SGC, which comprises of the following:

- the SG shortfall, calculated on a salary and wages base (including any overtime);
- nominal interest of 10% per annum; and
- an administration fee of \$20 per employee per quarter.

The amnesty period

Once finalised, the PSLA will apply retrospectively from 8 September 2020, being the date following the completion of the SG Amnesty period. The SG Amnesty period was from 24 May 2018 until 7 September 2020, which offered employers a one off opportunity to disclose any unpaid SG without the Part 7 penalties applying.

Impact to business

At the time of announcing the SG Amnesty, the government set out clear expectations that should employers have not paid the correct SG for their workforce, they will be faced with significant penalties. The Part 7 penalties equates to double the SGC payable by the employer for the quarter (effectively increasing it to 200%).

The penalty is commensurable to the level of voluntary disclosure by the employer, the employer's compliance history and any other mitigating or exceptional circumstances. The base penalty could be as high

as 200% of the SGC and the table set out in the PS LA 2021/D1 states the various rates based on the employer's voluntary / actions in response to the ATO compliance action.

Employers need to be aware there are limitations on the amount of penalties that can be remitted. This includes where employers have received a SGC default assessment and there has been continual non-compliance or a history of late lodgement of SG statements.

Key considerations

It is critical for employers to consider their SG position and to take action to address any possible non-compliance to avoid heavy penalties and creating a pattern of behaviour that would heighten the organisation's risk profile with the ATO. It is also important to ensure that your payroll system has been updated for the minimum SG level which increased from 9.5% to 10% on an employee's ordinary time earnings from 1 July 2021.

The due date for any comments on the PS LA 2021/D1 to the ATO is 27 August 2021.

We can help

Our team of specialists at Nexia Sydney can help you comply with all of your SG compliance obligations.

To better understand how the PSLA could impact you, or if you would like to undertake a SG compliance health check, please contact your local Nexia Advisor.

Advisory Specialist



Katie Lin
Partner

t 02 9164 0805

e klin@nexiasydney.com.au

w nexia.com.au