

# The Importance of Getting the Superannuation Guarantee Correct!

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In the last few weeks we have seen a number of high profile businesses and their directors get slapped with heavy fines for the under payment of employees including celebrity chef George Calombaris. Are you compliant?

## **Superannuation Guarantee (SG)**

Generally the superannuation guarantee applies to employees who are over 18 years and are paid at least \$450 (before tax) per month. This includes full-time, part-time and casual employees.

As part of an employee's employment conditions the employer must pay the super guarantee into the employee's chosen super fund. The amount is calculated as a percentage of the employee's Ordinary Time Earnings (OTE) which includes commissions, allowances and bonuses. The current percentage is 9.5%.

Employers have 28 days from the end of the quarter to make the SG payments to their employee's superannuation fund(s). See Table 1 for the payment due date.

## **What if you fail to pay the Superannuation Guarantee on time?**

For employers that fail to pay their SG payments to their employee's super funds by the due date they will be liable to pay what is called a Superannuation Guarantee Charge (SGC) to the ATO.

What you need to know about the Superannuation Guarantee Charge:

- The charge consists of three amounts
  - i. A SG shortfall – the amount of SG the employee(s) was not paid
  - ii. A nominal interest rate of currently 10%
  - iii. An administration fee of \$20 per employee per quarter
- The SG shortfall amount doesn't just include Ordinary Time Earnings (OTE). It is calculated using the employee's entire salary or wages which includes any overtime or annual leave loading.

- The Superannuation Guarantee Charge will not be tax deductible to the employer hence they cannot claim the super contribution or any additional costs or penalties as a tax deduction.
- The Superannuation Guarantee Charge scheme is currently self-assessed by the employer and the onus is on them to report and correct any missed superannuation contributions.
  - Employees may contact the ATO if they have reason to believe that they are not receiving the correct SG amount from their employer.
  - With the commencement of Single Touch Payroll the ATO will soon be able to track non-compliance via their integration with the Super Funds and SuperStream gateway providers.
- The payment of the Superannuation Guarantee Charge must be accompanied by a Superannuation Guarantee Charge Statement. Failure to lodge the SGC Statement on time may result in an additional levy of up to 200% of the charge amount.
- Once the ATO receives the SGC Statement and payment they will transfer the shortfall amount and interest to the employee’s nominated super fund.
- Employers can contact the ATO to arrange an extension of the cut-off date however interest will continue to accumulate.
- The ATO has a number of actions available to deal with non-payment of SGC debts including SGC audits and issuing Director Penalty Notices

Table 1

Quarter	Period	SG payment due date	SGC statement & SGC due date
1	1 Jul – 30 Sep	28 October	28 November
2	1 Oct – 31 Dec	28 January	28 February
3	1 Jan – 31 Mar	28 April	28 May
4	1 Apr – 30 Jun	28 July	28 August

### What if the Employee is also the Employer?

Where a business owner pays themselves there is an added layer of complexity. This generally isn’t a concern if the business structure is a sole trader or partnership as the owner cannot pay themselves. If you are operating a company or trust structure the following applies:

- Any amounts withdrawn by shareholders from a company may be treated as
  - salaries
  - superannuation contributions
  - or dividends
- Any amounts withdrawn by the owners of a trust may be treated as
  - salaries
  - or repayment of accumulated profits
  - or loans from the trust
- If owners pay themselves a salary then the tax and employment obligations that apply to non-related employees also applies to the owners.
- Directors fees are considered OTE and therefore superannuation applies



- Dividends paid to a director are not subject to superannuation

## Conclusion

Paying your employee's superannuation obligations on time is of critical importance as the Superannuation Guarantee Charge and potential ATO audit can quickly cripple a business' cash flow.

Once the new Single Touch Payroll reporting system is bedded down we believe the ATO's data matching systems will easily determine which employers are not complying with their employer obligations and will actively start chasing these employers.

To ensure you are being compliant:

- Know the relevant Awards that apply to your employees
- Ensure all employees are paid the correct amount per the relevant Award or Agreement
  - Dedicated bookkeeping or payroll software can assist in this regard
- Ensure the employee superannuation guarantee contributions are paid on time and via a SuperStream compliant gateway



### Did you know?

While we are on the topic of superannuation, have you heard of the **Superannuation Standard Choice Form**?

Employers are required to provide their employees with this form when they hire a new employee who is eligible to choose a superannuation fund (not all employees are eligible) and under other limited circumstances.

The employee will select a superannuation fund to have their superannuation guarantee contributions paid into or accept the employers default option. Once the completed form is received by the employer they have two months to action the request.

If the employer has not received the completed form back from the employee and a super contribution is due, the employer must make the payment to the employers nominated default superannuation fund on the employee's behalf by the due date (see Table 1).

If you have any queries, or need assistance to get your record keeping system on track, contact our office on 03 5382 3001 or [mail@wattsprice.com.au](mailto:mail@wattsprice.com.au)