

# client alert

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August 2018

## Super guarantee underpayments: employer amnesty

Are you an employer who's fallen behind on super guarantee (SG) payments for your employees? Perhaps your business had some cash flow issues in the past or you forgot to make the payments one quarter. If so, don't despair: the government has announced a one-off amnesty until 24 May 2019, to allow employers to self-correct historical underpayments of SG amounts without incurring the penalties that would normally apply. To be recognised under the amnesty arrangement, the SG shortfall must have occurred between 1 July 1992 and 30 March 2018 and must not have been previously disclosed to the ATO.

The ATO estimates that in 2014–2015 around \$2.85 billion in SG amounts went unpaid. While this represents 95% rate of compliance with the requirements, the ATO considers any level of non-compliance unacceptable when it comes to employees' superannuation rights.

The amnesty is available for SG shortfalls that occurred as far back as 1 July 1992, so if your business missed SG payments for an employee during the eligible period and you haven't told the ATO yet, you may be able to rectify the oversight without penalties by making a disclosure in the approved form. However, the amnesty arrangements are not available for shortfalls that occur from 1 April 2018 onwards.

Employers who take advantage of the amnesty will still need to pay all SG shortfall amounts owing to their employees, including the nominal interest and the general interest charge (GIC), but not the administrative component. However, any SG charge payments and offsetting contributions made during the amnesty will be tax deductible for the employer.

According to the government, employers that have shortfalls but do not take advantage of the amnesty will face higher penalties when they are subsequently caught. In general, a minimum penalty of 50% of the shortfall amount will be imposed on top of the SG

charge that is already owed. Additionally, a penalty of 200% of the SG shortfall amount may apply for the failure to lodge an SG statement on time. On top of this, SG charge payments and offsetting contributions will not be deductible outside the amnesty period.

As a part of the carrot-and-stick approach the government is taking, during the amnesty the ATO will continue its usual enforcement activity against employers that have historical SG obligations and don't own up voluntarily. It is also seeking to give the ATO more tools to enforce compliance going forward, including:

- giving the ATO the ability to seek court-ordered penalties in cases where employers defy directions to pay their SG liabilities, including up to 12 months' jail in the most egregious cases of non-payment;
- requiring super funds to report contributions received at least monthly to the ATO, enabling the ATO to promptly identify non-compliance and take action;
- rolling out single touch payroll (STP) to all employers by 1 July 2019, which will align payroll functions with regular reporting of taxation and superannuation obligations; and
- improving the effectiveness of the ATO's recovery powers, including strengthening director penalty notices and use of security bonds for high-risk employers, to ensure that unpaid superannuation is better collected by the ATO and paid to employees' super accounts.

### Want to take advantage of the amnesty?

The amnesty provides a good, although limited, opportunity for employers to get their superannuation obligations in order before the ATO ramps up its compliance action and enforcement actions. If you're unsure about your SG compliance status, we can help to you find out where you stand, and to take advantage of the amnesty if needed.

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## Retirement: downsize your home to boost your super

From 1 July 2018, people aged 65 and over can make additional non-concessional superannuation contributions of up to \$300,000 from downsizing their home, subject to certain conditions. This is available in addition to the concessional and non-concessional contribution caps. Now that all the kids have all flown the coop and you're left with an empty nest, it might be a good time to consider downsizing your home to pursue that ultimate retirement dream – perhaps fishing beside a river, surfing every morning or getting out into fresh country air. Your dream could be one step closer with the new downsizer contribution scheme.

If you're aged 65 or over, from 1 July 2018 you can make additional non-concessional contributions of up to \$300,000 from the proceeds of selling your home to downsize, subject to certain conditions:

- the contribution amounts must be equal to or part of the capital proceeds of selling your interest in your principal place of residence (“a qualifying dwelling”);
- to qualify, your principal place of residence must be located in Australia and you must have held it for a minimum of 10 years;
- any capital gain or loss from selling the dwelling must have been eligible for the main residence capita gains tax (CGT) exemption, in whole or part;
- the contribution must be made within 90 days of selling the dwelling (or you must apply to the ATO for a longer allowable period);
- you must make and document the choice to treat the contribution as a downsizer contribution, and notify your complying superannuation fund of this choice either before or at the time you make the contribution; and
- you must not have previously made downsizer contributions or have had one made on your behalf in relation to an earlier home sale.

Downsizer contribution amounts will be counted as neither concessional nor non-concessional contributions, meaning you can boost your super this way even if you have already reached your concessional or non-concessional contributions caps for the year, provided you meet all the conditions.

If you and your spouse jointly own a home and decide to downsize, you can both benefit from the downsizer contributions scheme. For downsizing the same home, you and your spouse could potentially contribute a maximum of \$600,000 in total into your individual super funds or self managed super funds (SMSFs). The other advantage is that the restrictions on non-concessional contributions for people with total superannuation balances above \$1.6 million will not apply. However, any downsizer contributions will still be subject to the \$1.6 million pension transfer balance cap.

Making downsizer contributions may have unintended consequences if you plan on applying for the Age Pension, so holistic retirement planning is needed to take full advantage of the scheme to suit your unique circumstances while minimising the downsides.

Currently, the family home is totally exempt from the Age Pension assets test. However, downsizer contributions, and any changes in your superannuation balance as a result, may count towards the Age Pension asset test.

### Want the whole picture?

Need advice on how you could potentially take advantage of this option, and what the downsides could be? We can provide you with holistic advice to help make sure you realise your retirement dreams.

**Important:** M Point Superannuation Services Pty Ltd (AFSL: 485840) advise clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.