

Government acts to make sure your super gets paid

The government is moving to close loopholes which have allowed unscrupulous employers to evade their superannuation obligations.

To ensure unscrupulous employers do not continue to deliberately short-change employees on their superannuation, the government has released draft legislation designed to protect workers' super entitlements and strengthen the Superannuation Guarantee (SG) scheme.

The draft laws, contained in the Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018, will improve both the reporting of superannuation obligations and the Australian Taxation Office's (ATO) ability to obtain real-time information about an employer's compliance by:

- allowing the ATO, in cases where employers fail to comply with their SG obligations, to issue directions to pay unpaid SG and undertake SG education courses,
- allowing the ATO to disclose more information about SG non-compliance to affected employees,
- improving the operation of the ATO's collection and compliance measures;
- extending Single Touch Payroll to all employers,
- facilitating more regular reporting by superannuation funds,
- streamlining employee commencement processes; and
- introducing criminal penalties for failure to comply with a direction to pay.

Under the SG scheme, which was introduced in 1992, it is compulsory for employers to make superannuation contributions on behalf of their qualifying employees. Each quarter employers are required to pay a percentage of an employee's ordinary time earnings to their super fund. Since 1 July 2014, the minimum SG contribution has been 9.5 per cent.

Despite these obligations, legislative loopholes have allowed certain employers to avoid complying with their obligations.

However, the government has made it clear that under the proposed changes employers who continued to break the law will face serious consequences.

In a 24 January 2018 media release, the Minister for Revenue and Financial Services Kelly O'Dwyer said: "There will now be serious consequences for employers who break the law. The ATO will have a suite of enforcement and collection tools, including strengthened arrangements for director penalty notices and security deposits for superannuation and other tax-related liabilities."

"And, in cases where employers defy directions to pay their superannuation guarantee liabilities, the ATO will be able for the first time to apply for court ordered penalties, including up to twelve months imprisonment. To embed ongoing compliance the ATO will also have the ability to require employers to undertake training."¹

The latest move by the government follows the introduction last year of its Fair Work Amendment

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(Recovering Unpaid Superannuation) Bill 2017 which is aimed specifically at closing a loophole that allows employers to short-change employees who make salary sacrifice contributions to their super.

At the time of writing this column, it is important to note that the Fair Work Amendment (Recovering Unpaid Superannuation) Bill 2017 is yet to be voted on in parliament and the draft Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018 is yet to be introduced to parliament.

In December 2016, Industry Super Australia and Cbus released research which conservatively estimated that “rogue employers are dodging compulsory superannuation payments to the tune of \$3.6b a year (2013-14).”

The research also concluded that around 2.4m, almost one-third, of Australian workers were missing out on some or all of their super entitlements.²

Employees who have concerns that their employer is not paying the required SG contributions are advised by the ATO to take the following steps:

- Firstly, confirm if you are entitled to receive SG contributions.
- If you are so entitled, calculate how much your employer should be paying.
- Then, talk with your employer and ask them how often they are currently paying your super into which fund and how much are they paying.

- Cross-check this information with member statements from your super fund.
- It is also a good idea to call your super fund and ask them to confirm whether your employer has paid your super contributions.
- Create or use your existing myGov account to access online services which allow you to check how much super has been paid into your super fund, as well as details of all your super funds including any you have lost track of.
- After having taken the steps listed above, if you still believe your employer is not paying enough (or any) super you can report your employer to the ATO.³

Employers who have concerns that they may not have fully satisfied their SG contribution responsibilities for their staff are advised to make immediate contact with the super fund/s to which they contribute. The super fund will be able to provide further information about employer SG responsibilities.

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¹ See <http://kmo.ministers.treasury.gov.au/media-release/006-2018/>

² See <https://www.cbussuper.com.au/content/dam/cbus/files/news/media-releases/Unpaid-Super-Report-Dec-2016.pdf>

³ Employees can find more information on the ATO’s recommendations at <https://www.ato.gov.au/Individuals/Super/Unpaid-super-from-your-employer/>