

## MORE ATO ACTION ON SUPER GUARANTEE NON-COMPLIANCE



### The findings of the Australian National Audit Office's report

The Australian National Audit Office (ANAO) has recently issued a report on the results of an audit conducted on the effectiveness of ATO activities in addressing super guarantee (SG) non-compliance. While ANAO notes that the SG system operates largely without regulatory intervention as employers make contributions directly to super funds or through clearing houses, the ATO does have a role as the regulator to encourage voluntary compliance and enforce penalties for non-compliance.

To measure this non-compliance, the ATO uses a measure called the SG gap, which is an estimate of the difference between the amount the ATO collects and what would have been collected if every taxpayer was fully compliant. The most recent data from the ATO was published in 2021 and indicated that the net SG gap in 2018-19 was around \$2.5b.

Overall, the ANAO report found that ATO activities addressing super guarantee non-compliance were only partly effective. This also held true for the risk-based SG compliance framework in which the ATO operates. It noted that while there was some evidence that the ATO's compliance activities were improving employer compliance, the extent of improvement could not be reliably assessed.

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## The report's recommendations and the ATO's response

The report made three recommendations to improve ATO compliance activities in relation to SG non-compliance.

The first was that the ATO implement a preventative approach to SG compliance.

The second was that the ATO assess its performance measures against the Public Governance Performance and Accountability Rule 2014 and enhance its public SG performance information. This includes setting targets for measures such as the SG gap and having explanations for performance results, as well as changes over time. While the first two recommendations will have a negligible practical impact on day-to-day operations for employers in general,

ANAO's third and final recommendation may be a different story. Among other things, ANAO recommended that the ATO maximise the benefit to employee's super funds by making more use of its enforcement and debt recovery powers, and to consider the merit of incorporating debtors holding the majority of debt into prioritisation of debt recovery actions. In its reply, the ATO agreed with this recommendation and stated that while it paused much of its firmer super guarantee related recovery actions through the COVID-19 pandemic, those have now recommenced. With the recommencement of recovery actions, its focus will generally be on taxpayers with higher debts, although it will be prioritising taxpayers with super guarantee debts irrespective of value.

The ATO also agreed with the first two recommendations in whole or part. It says that it has already begun implementing a preventative compliance strategy using data sources such as Single Touch Payroll and regular reporting from super funds. It expects to continuing prioritising a preventative approach while also strengthening its data capability.

In addition, the ATO have indicated that they will continue to investigate every complaint received in relation to the non-payment of SG, and take action where non-payment is identified. These actions include the imposition of tax and super penalties, as well as the recovery and back payment of super to employees. In addition, it will be increasing transparency of compliance activities and employer payment plans so that affected employees are aware of the expected timing of back payments of super.

### CONTACT

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