PROPOSED MECHANISMS FOR PAYDAY SUPER

Unpaid superannuation is equivalent to wage theft and is detrimental to the retirement income of many Australians. That's why in the 2023-24 Federal Budget, the government proposed measures to reduce the structural drivers of unpaid super guarantee (SG), including increasing the payment frequency of SG to occur at the same time as when salary and wages are paid (payday super), and increasing the ATO's data matching capabilities to target SG compliance.

A consultation paper has now been released by the government on two proposed models that could be used to implement the payday super measure: the employer payment model and the due date model. Under both models, the SG charge, which is currently designed for quarterly payments, will need to be updated to align with a more frequent payment schedule. Essentially, the SG charge is a penalty that applies if an employer does not pay an employee's SG amount in full, on time and to the right fund.

Currently, the due date for the payment SG charge is one month after the SG due date. For example, for the quarter 1 July to 30 September the SG payment is due on 28 October, and the SG charge and statement is due on 28 November. Changes proposed to the SG charge to fit in with payday super could include amendments to the rate of nominal interest (currently 10% pa) and the size of the administration fee (currently $20 per employee, per quarter).

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However, to reduce instances where employers are inadvertently penalised for circumstances outside their control or for small administrative errors, it is suggested by the consultation paper that the Commissioner of Taxation could be granted flexibility to remit or reduce the SG charge or extend the due date under certain circumstances (which would be limited and specified in legislation). The paper emphasises that this will not be a general discretion for the Commissioner to remit or reduce the charge or extend the due date for payment.

Under the employer payment model, it is proposed that the SG charge would be based on a requirement that the employer make the payment of an SG contribution on payday, and where a payment is not made, the employer would become liable to pay the SG charge from that date (ie nominal interest would be calculated from this date). The ATO will be required to make reconciliations between the STP (Single Touch Payroll) and Member Account Transaction Service (MATS) data to ensure that the correct amount of super has been received by an employee's super fund.

For the due date model, the current model of the SG charge will possibly be retained, in that an employer becomes liable to pay the SG charge if their employee's super contribution is not with their fund by a specified due date. Contributions will need to be received by a super fund within a certain number of days following an employee's payday. According to initial consultation conducted by Treasury and the ATO, a reasonable due date for super contributions to reach the fund would be between 8 and 13 days after payday.

Regardless of the model used to implement payday super (ie employer payment or due date), the ATO will use enhanced reporting by employers and funds to ensure that super payments have been paid on payday or received by the funds by the due date. It will then initiate SG charge assessment through compliance activities more frequently, with lower reliance on and need for cases to be raised through employee notifications.

Based on the outcomes of the consultation, the government will redesign the super compliance framework to incorporate payday super, which is proposed to commence from 1 July 2026 subject to the passage of legislation. Transitional arrangements may also be available to ensure concessional contributions caps are not exceeded by inadvertent timing issues.

CONTACT

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