

## Client eBrief



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## ATO Lodgement Dates

### Super Amnesty Might be Back

The Assistant Minister for Superannuation et al, Senator Hume, has introduced legislation into Parliament to bring the Super Guarantee Amnesty back to life.

#### Important Facts

1. **It is not law yet.** It is in its own piece of legislation – i.e. it is not bundled with any other issues or changes – so it may have a better chance of being passed.
2. The Amnesty period will extend for any SG admitted to the commissioner up until 6 months after the law is given Royal Assent, so you have to get to the commissioner before they start any action against the employer, and do so within 6 months of the start date.

*Employers will not be off the hook – to use the amnesty, they must still pay all that is owing to their employees, including interest. However, the amnesty will encourage employers to come forward and pay outstanding superannuation, by not hitting them with the penalties usually associated with late payment.*

*Importantly, employers who do not take advantage of the one-off amnesty will face significantly higher penalties when they are subsequently caught – typically employers will face a minimum 100 per cent penalty on top of the SG Charge they owe. The SG Charge includes the full amount of SG owed to employees, interest on the SG owed of 10 per cent, and an administration fee.*

Super Guarantee disclosures to the ATO after 24 May 2018 up until the 6 month expiry (yet to be determined) should be subject to the Amnesty.

You can disclose historic Super Guarantee shortfall since 1/7/1992, but only up until the Jan–Mar 2018 Quarter. Any SG not paid for later quarters are **not** eligible for the Amnesty.

3. It is about **disclosure** of the outstanding Super on SGC forms. Payments can then be made, or arranged subject to a payment plan.

These dates are from the ATO website and do not take into account possible extensions.

You remain responsible for ensuring that the necessary information is with us in time.

#### **BAS/IAS Monthly Lodgements**

Final dates for lodgements and payments:

September Activity Statement  
21 October 2019

October Activity Statement  
21 November 2019

#### **BAS Quarterly Lodgements**

Final dates for lodgements and payments:

**1st Quarter 2020 Financial Year:**  
**September Quarter 2019 (incl. PAYGI)**  
28 October, 2019

When a due date falls on a Saturday, Sunday or Public Holiday\*, you can lodge or pay on the next business day.

\*A day that is a public holiday for the whole of any state or territory in Australia.

Due date for super guarantee contributions:

**1st Quarter 2020 Financial Year:**  
July to September 2019 – contributions must be **in the fund** by 28 October, 2019

The super guarantee charge is not a tax deduction if not paid by these dates.

Refer to the ATO for details regarding any SGC charges applicable if not paid by due date.

#### **Single Touch Payroll Deadline**

Have you started reporting your payroll through STP? Deadline for small employers is 30th September, 2019.

To find out what is required to update your software, please call us.

- Employers **must** get the Superannuation Guarantee up to date, and then stay compliant. The proposed Amnesty allows history to be cleaned up with fewer penalties. Whether the Amnesty becomes law or not, the ATO as regulator will be chasing employers; they are seeing more information about Super. After the proposed Amnesty, we expect there will be little compassion, and the law doesn't allow remission of all the penalties.

## Summary

We anticipate it will be enacted, but don't count your amnesty before it's hatched (not like that last time).

All SG since Jan 2018 is not subject to the amnesty, so this should be brought into line anyway. Penalties and loss of tax deduction will still apply.

Older SG; we recommend you bring it into line by making the disclosures ASAP to the Commissioner using the SGC system. If the Amnesty becomes law, then fewer penalties will apply, and the payments will be tax deductible.

### ATO Compliance follow up - STP told them you aren't paying your Super

The ATO have already conducted early trial programs around analysing the employer's super accrual amounts reports and comparing that to the amounts paid into superfunds.

The ATO is about to commence a further program of the next 4000 employers that have been identified as having potential issues with the accrual and payment of Super.

It is the larger employers and it is the bigger issues. This program will become more streamlined and all employers should assume that their data is going to be checked and eventually issues will be followed up.



## Personal Leave Accrual Case goes to High Court

### Personal Leave Should be Accrued Pro-rata

We are very pleased to hear that the Federal Court Decision in the *Mondelez v AMWU & Ors* case is going to be appealed.

Both the employer and the Attorney-General for Australia have indicated major concerns with the interpretation, and the potential impact of the application of the law as indicated in the current decision.

There is significant information that indicates **personal leave** should be accrued in the same manner that it has been since the introduction of the *Fair Work Act*; i.e. a full time worker of 36 hours per week would be entitled to 10 days of full time (72 hours) of personal leave per year. Part time workers would accrue leave on a pro-rata basis. A shift worker working 3 days of 12 hour shifts would be entitled to personal leave equating to the same amount as "otherwise worked" – i.e. over a 10 day period they would have worked 6 x 12 hours (72 hours) – and should therefore also accrue 72 hours of personal leave per year.

## Impact

ICB advises employers and our members not to change current practice.

## Comment

We believe the Fair Work Ombudsman will now need to revert their website and advice to adhere to the same practice prior to the Federal Court decision until the appeal process has been decided.

## Case Background

On 21 August 2019, the Full Federal Court of Australia handed down a decision regarding the accrual of personal leave for full time shift workers. The decision deals with the method of accruing and taking paid personal/carer's leave for the purposes of the National Employment Standards under the *Fair Work Act 2009*.

Full-time workers are entitled to 10 working days personal leave under the [National Employment Standards](#). The debate surrounds workers who work longer shifts, and have more actual days not working during the week. Confusion surrounds the calculation of personal leave in hours vs working days. The Fair Work Ombudsman has advised the following:

*“For every day of personal/carer’s leave taken, an employer deducts a day from the employee’s accrued leave balance. If an employee takes a part-day of leave, then an equivalent part-day is deducted from the employee’s accrued leave balance.”*

Fair Work has [made a few comments](#) in reaction to the case, and have also updated their [information page](#) regarding **personal leave accrual**. [Details of the case ruling can be found here](#).

**Note:** ICB believes that the Fair Work Ombudsman website has been adjusted prior to the decision being finalised, and thus employers should not alter previous practices (as described below).

## ICB Recommendation

ICB recommends employers continue to accrue a liability for personal leave based on the amount that a worker would have “otherwise been working” on that day.

For example:

1. A part-time worker who works 3 days, 5 hours a day each week, would accrue 6 days of 5 hours of personal leave over a year – i.e. what they would have worked over a standard 10 days of “work time” – they would have worked 6 out of those 10, and for 5 hours per day. When they took personal leave for a day that they would have been working, they would be paid the same as if they were otherwise working (i.e. 5 hours).
2. If a worker works 3 days of 12 hour shifts per week, then they would accrue 6 days of 12 hours. If they take personal leave on a day they would be working, then they get paid for 12 hours.
3. If a worker works 5 days of 7.6 hours, then they would accrue 10 days of 7.6 hours. If they take personal leave on a day then they would be paid 7.6 hours.

This pro-rata leave attribution mathematically works in payroll by accruing personal leave at a rate related to the hours they work; i.e. nothing changes in payroll just yet..

Disclaimer: All or any advice contained in this newsletter is of a general nature only and may not apply to your individual business circumstances. For specific advice relating to your specific situation, please contact your accountant or contact me for further discussion.

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