

# The ATO is not Santa Claus but . . . It does know if you've been naughty or nice!



Single touch payroll (STP) is in full swing for all employers that are now required to report payroll data electronically to the Australian Tax Office (ATO) every time they make a payment of wages.

This is effective from 1 July 2019. Dental surgeries that are unaware of this new requirement should contact their accountant immediately. There are only limited exemptions relating to micro employers (one–four employees), those with unreliable internet services (or no service), and surgeries that only employ family members and directors/shareholders of their incorporated business. The details that are reported to the ATO through STP includes details of each employee's gross earnings, the taxes withheld and the amount of superannuation required to be paid. These new measures mean that the ATO will know almost instantly everything related to your payroll activities.

It now seems an almost daily occurrence where we find that large, high-profile businesses such as Domino's, Bunnings, 7-Eleven or celebrity chefs have underpaid workers, or incorrectly calculated entitlements or not paid superannuation. This will surely filter down to smaller employers where the ATO can easily determine underpaid super or incorrect tax withheld. The legislation is very strong in this area, and it would not even require an audit of the business by the ATO but merely a letter with a penalty notice attached that identifies the mistake.

Where superannuation is paid late, the legislation provides no discretion to the ATO to deem that the employer has met their requirements. This is the case even where the payment is only one day overdue. In circumstances where superannuation is not paid or paid late, a Superannuation Guarantee Charge is applied. This charge is calculated at 9.5 per cent of the wages paid but must be paid to the ATO (not

the super fund), and is accompanied by an administration fee (\$20 per employee per quarter) and a penalty. The big penalty is that the 9.5 per cent Superannuation Guarantee Charge is not tax deductible. This can be a very severe penalty for merely paying just one day late. Employers should attempt to pay their superannuation liability at least one week before the due date as many clearinghouses, such as MYOB SuperStream, may take up to four–five business days for the transfer to clear, and in accordance with the legislation, it is not the date paid that matters, it is the date the payment is received by your super fund.

All employers are required to pay superannuation at 9.5 per cent on the ordinary times earnings of their employees where the employee's wage exceeds \$450 per calendar month. This payment must be made within 28 days of the end of each quarterly reporting period (i.e. 28 days after 30 September, 31 December, 31 March and 30 June). Superannuation funds are now required to report member contributions/transactions within 10 business days so if superannuation is unpaid or is paid late then the superannuation fund knows, the employee/member knows and the ATO also knows. There is nowhere to hide.

It is likely that the Superannuation Guarantee Amnesty will be reintroduced to Parliament and if it becomes law, there will be a six-month window for employers to catch up on underpaid superannuation. The Amnesty will mean that employers can pay back-dated superannuation shortfalls without an admin fee or penalties. Most importantly, they will be able to get a tax deduction for the payment. The payment will be made directly to the employees' super fund and not to the ATO.

In my opinion, there are only four simple things that an employer needs to do to avoid payroll hassles:

1. Don't pay wages that are not in

accordance with the relevant modern awards. (If you are unsure, get professional advice.)

2. Deduct the correct amount of tax from the wages that you pay.
3. Calculate superannuation correctly and pay on time.
4. Ensure wages paid to related persons are on the same terms and conditions as would be the case for a normal employee.

There are further provisions outside of the STP Regulations that may also trap unwary or disorganised business owners. Wages paid to a related party where no tax has been deducted will result in the business being unable to claim a tax deduction for the wages paid. Where spouses and related parties are potentially paid on a non-commercial basis, there is more likelihood that this will attract the attention of the ATO, particularly where a regular payment does not show up through the STP system and everything appears to be processed (in a rush) just prior to 30 June.

MW Partners deals with payroll and superannuation matters for dental surgeries on a daily basis. If you are a practice owner who has concerns regarding your payroll payment processes, contractor payments or superannuation, please contact the office on (03) 8825 5400 for a free, no-obligation consultation.



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