



# Christmas 2017 Newsletter



Welcome to our newsletter for 2017. Another year has gone quickly by, and 2018 awaits.

Our big (and sad) news is that, after more than 13 years of diligent and expert service, Dale is retiring, along with her husband Russ. If you have been part of the Globe Family for any length of time, you will know how integral Dale is to our bookkeeping area, and you will have a fair idea of how sorely they will both be missed. Having said that, we are delighted for them both and wish them every happiness in their retirement.

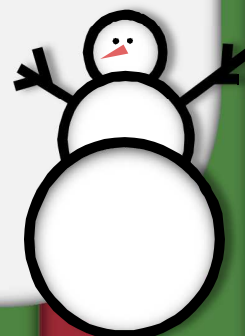
New kids on the block Anna, Liz, Lyn and Sharron have been well trained by the master and we are more than confident that they will be able to provide the same level of excellent service along with Meg and Scott in our bookkeeping area. We also welcome Jess Henry to the staff. Jess has just finished her first year of uni and is putting her accounting skills to good use. Head over to our website [www.globeaccounting.com.au](http://www.globeaccounting.com.au) to put faces to names and to check out our full staff list.

Next year we will implement a system whereby we will send you a checklist tailored to your business with a list of all information we require to finalise your financial statements and income tax returns. We intend to start work on your file only after we receive ALL of the information required. This will assist in reducing the time taken to complete your work.

As always, our heartfelt thanks go to you, our most wonderful supporters and advocates. We enjoy working with you and very much look forward to working with you in the New Year. Our best wishes for a safe and happy Christmas, and a healthy and prosperous New Year.



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## Super Guarantee – What Happens When You Get It Wrong

The ATO receives around 20,000 reports each year from people who believe their employer has either not paid or underpaid compulsory superannuation guarantee (SG). In 2015-16 the ATO investigated 21,000 cases raising \$670 million in SG and penalties.

The ATO's own risk assessments suggest that between 11% and 20% of employers could be non-compliant with their SG obligations and that non-compliance is "endemic, especially in small businesses and industries where a large number of cash transactions and contracting arrangements occur."

Celebrity chefs are the latest in a line of employers to publicly fall foul of the rules - one for allegedly inventing details on employee payslips and another for miscalculating wages. But what happens if your business gets SG compliance wrong?

Under the superannuation guarantee legislation, every Australian employer has an obligation to pay 9.5% Superannuation Guarantee Levy for their employees unless the employee falls within a specific exemption. SG is calculated on Ordinary Times Earnings – which is salary and wages including things like commissions, shift loadings and allowances, but not overtime payments.

Employers that fail to make their superannuation guarantee payments **on time** need to pay the SG charge (SGC) and lodge a Superannuation Guarantee Statement. The SGC applies even if you pay the outstanding SG soon after the deadline.

The SGC is particularly painful for employers because it is comprised of:

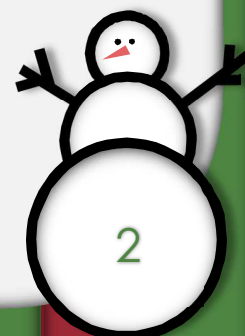
- The employee's superannuation guarantee shortfall amount – so, all of the superannuation guarantee owing
- Interest of 10% per annum, and
- An administration fee of \$20 for each employee with a shortfall per quarter.

**Unlike normal superannuation guarantee contributions, SGC amounts are not deductible, even if you pay the outstanding amount. That is, if you pay SG late, you can no longer deduct the SG amount even if you bring the payment up to date.**

And, the calculation for SGC is different to how you calculate SG. The SGC is calculated using the employee's salary or wages rather than their ordinary time earnings. An employee's salary and wages may be higher than their ordinary time earnings particularly if you have workers who are paid for overtime.

Under the quarterly superannuation guarantee, the interest component will be calculated on an employer's quarterly shortfall amount from the first day of the relevant quarter to the date when the superannuation guarantee charge is paid

The penalties imposed on the employer for failing to meet SG obligations on time might seem harsh, but they have been designed that way on purpose. This is really money that belongs to the employee and should be sitting in their superannuation fund earning further income to support the employee in their retirement.





### **Directors are personally liable for unpaid SG**

Where attempts have failed to recover superannuation guarantee from the employer, the directors of a company automatically become personally liable for a penalty equal to the unpaid amount.

Directors who receive penalty notices need to take action to deal with this – speaking with a legal adviser or accountant is a good starting point.

### **Why ‘property flipping’ is the next ATO target**

The tax law does not allow you to ‘flip’ a property tax-free even if you are living in it. Most people think that they can move in to a property, renovate it, and then sell it without paying tax. The main residence exemption - the exemption that protects your family home from tax - does not apply if your primary purpose is to ‘flip’ the property for a profit. The fact that you are living in the property does not mean it’s exempt from tax.

Some people reading this are probably thinking, but who is going to know? How can the Australian Taxation Office (ATO) really know what my intention is when I buy a property to live in? Generally, the ATO is looking for a pattern of behaviour or a declaration of intention. For example:

- You are not employed and earn your income moving in, renovating then selling
- You have a pattern of renovating and selling properties
- Your loan documents on your mortgage suggest the property is for flipping and not for the long term
- You go on national television stating that you are looking to move in, renovate and flip the property (hello The Block contestants).

The ATO’s guide on property is clear: “If you’re carrying out a profit-making activity of property renovations also known as ‘property flipping’, you report in your income tax return your net profit or loss from the renovation (proceeds from the sale of the property less the purchase and other costs associated with buying, holding, renovating and selling it).”

People often make the assumption that any gain made from property flipping will be exempt from tax as long as the property is their main residence for the entire ownership period. However, this is only the case where the property is held on capital account. A property would generally be held on capital account if it is bought with the genuine intention of using it as a private residence or rental property for the foreseeable future and there is evidence to back this up. The ATO indicates that someone who is renovating a property with the intention of selling the property again at a profit could be taxed on revenue account in which case the main residence exemption does not apply.





**The guide identifies three main scenarios and the general tax implications:**

- Personal property investor – this is someone who purchases a property with the primary intention of using it as a long-term rental property or private residence. If this person undertakes renovations and then sells the property earlier than originally planned, then they should still generally be able to argue that the sale is dealt with on capital account, which means that the main residence exemption and/or Capital Gains Tax (CGT) discount could apply.
- Isolated profit making undertaking – this is someone who buys a property with the primary intention of carrying out renovations and then selling the property when the work is completed. Someone in this category is likely to be taxed on revenue account with no access to the main residence exemption or CGT discount.
- Business of renovating properties – this is someone who undertakes property-flipping activities on a regular or repetitive basis and where the activities are organised in a business-like manner. As with the category above, there is generally no access to the main residence exemption or CGT discount.

Just because you live in the property for all or part of the ownership period does not automatically mean that the profits from sale are exempt from tax. The main residence exemption can only reduce capital gains; it cannot reduce amounts that are taxed on revenue account.

What is the main residence exemption?

Generally, you do not pay CGT on the sale of your private home.

A full exemption should be available if the following conditions are met:

- You are an individual who is selling a dwelling or an ownership interest in a dwelling;
- The dwelling has been your home for the entire ownership period;
- The dwelling has not been used to produce assessable income (i.e., rented out); and
- The dwelling is situated on land that is 2 hectares or less.

In some situations it is possible to apply a full exemption even if you have not lived in the property for the entire ownership period or where the property has been rented out for a period of time. However, the rules can be complex and need to be analysed in detail to confirm the position.

If a full exemption is not available, it may still be possible to apply a partial exemption. The general 50% CGT discount can also be applied if you have owned the dwelling for more than 12 months (subject to your residency status).

Earlier this year the Government announced that non-residents and temporary residents would no longer be able to access the main residence exemption (existing properties held prior to 9 May 2017 will be able to access the exemption until 30 June 2019). However, these proposed changes are not yet law and we are still waiting on the final version of the new rules to be released.



Whether a dwelling is your main residence is a question of fact. The following factors are often taken into account to help determine the issue:

- The length of time you have lived in the dwelling;
- The place of residence of your family;
- Whether you have moved your personal belongings into the dwelling;
- The address you have your mail delivered;
- Your address on the Electoral Roll;
- The connection of services such as telephone, gas and electricity; and
- Your intention in occupying the dwelling.



#### **Other tax and renovation issues**

The main residence exemption is not the only issue that comes up with property flipping. Tax deductions for rental properties and renovating for profit inside an SMSF are common topics:

#### **Can I claim a tax deduction for renovations on my investment property?**

It is not generally possible to claim an upfront deduction for amounts spent on improving a property unless you are carrying on a business of buying, renovating and selling properties. If the property is held for long-term investment purposes then it is generally possible to claim a deduction for these costs over a period of time while the property is used to generate rental income.

#### **Can I renovate a rental property owned by my SMSF?**

An SMSF can renovate a property it owns as long as the money used to pay for the renovation is from money already within the fund. If the members pay for the renovation themselves (instead of using money in the fund), the renovation costs can create a contribution issue and the value could even be the improved value of the asset. The usual restrictions around a SMSF acquiring assets from a related party should also be considered, so the SMSF should pay for all the required materials for the renovations directly (or under an agency agreement) rather than reimbursing a related party for the expense.

#### **Foreign property owners slapped with fee for vacant property**

Australia has followed the international trend of penalising foreign owners of Australian residential property who keep their property vacant for extended periods of time.

Last month Parliament approved legislation that imposes an annual vacancy fee on foreign owners of residential real estate if the property is not occupied or genuinely available on the rental market for at least 183 days in a particular 12 month period.





Foreign owners can avoid the fee by living in the property (or have a family member live in the property), leasing the property, or making it available for rent, for a total of 183 days in a 12 month period. A property is genuinely available for rent if it is made available on the rental market; advertised publicly; and, available at a market rent.

Interestingly, the law requires the property to be let for a minimum of 30 days – so short term rentals arranged through platforms such as AirBNB are not an option unless the rental period is 30 days or more.

If owners fail to comply with the new law the Government has the capacity to recover any outstanding fee as a debt and/or by the creation of a charge over Australian land owned by the foreign person.

The vacancy fee is equal to the initial foreign investment application fee (currently \$5,500 for properties acquired for \$1m or less). The vacancy fee can also apply even if the initial application fee was waived. A vacancy year generally starts at settlement when the property was acquired or in some cases when the occupancy certificate is issued for newly built dwellings. The new vacancy fee system only applies if the notice or application to acquire the property was submitted with the Foreign Investment Review Board on or after 7.30pm on 9 May 2017.

Importantly, a foreign person who falls within the scope of the rules will need to lodge a vacancy fee return with the ATO within 30 days of the end of the relevant 12 month period. If this obligation is not met then the owner is deemed to be liable to the vacancy fee, even if the 183 day occupation requirement was actually satisfied. The main exception to this is where the owner has disposed of their interest in the property before the end of a particular vacancy year.

### **The Uber Driver GST Surprise**

As most people are now aware, Uber drivers need to register for GST by the time they complete their first drive. What many are unaware of however is that the GST registration applies to any other businesses that they run as a sole trader. Take the example of someone who has a micro business that turns over less than \$75,000. Under GST law, the business owner is not required to be registered for GST and there should be no GST on the things they sell to customers. However, if this same micro business person starts driving for Uber, the GST registration applies not only to their Uber activities but to their micro business as well.

### **ACCC gets tough on credit card surcharge**

The ACCC has issued a warning to businesses charging excessive credit card fees. One large merchant has already been issued with four infringement notices and has paid \$43,200 in penalties.

The new rules, which came into effect from 1 September 2017, prevent merchants from charging more than the true cost of the transaction. As a guide, where a charge is imposed, the ACCC says that consumers should expect to pay around 0.5% to 1% for payment by debit card, 1% to 1.5% by MasterCard and Visa credit cards and 2% to 3% for American Express. Consumers are being encouraged to contact the ACCC if a business is charging more than what the ACCC expects.

**Merry Christmas from all the Team!**

