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Australia: Superannuation guarantee charge

Overview

The Australian Government (on 24 May 2018) announced and introduced legislation containing a 12-month amnesty, commencing from the date of the announcement, for any employers who seek to disclose any historical underpayment of superannuation guarantee (SG).

The amnesty package is designed to incentivize employers to voluntarily disclose and compensate their employees for any unpaid superannuation.

The amnesty covers shortfalls that relate to historic periods prior to the amnesty period only, and will not apply to the quarter ending 30 June 2018, or later quarters during the amnesty period. Furthermore, the amnesty is not available to employers who are already the subject to an Australian Taxation Office (ATO) investigation or have been notified of an intended investigation.

The amnesty does not absolve the employer from making the mandatory 10% per annum nominal interest charge component, which is for the benefit of the employee. However, the incentive (other than to do the right thing) is to provide the following relief:

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- Employers may claim an income tax deduction for the superannuation guarantee charge (SGC), which is ordinarily non-deductible;
- Employers will not be liable to pay the administrative charge component of $20 per employee, per quarter (applicable to newly disclosed employees only); and
- Employers will not be subject to any additional SGC "penalty" (*i.e.*, up to 200% of the SGC).

Furthermore, the amnesty includes broader measures that may be favourable to impacted employees (whether administratively, financially, or both) insofar as any remedial contributions may impact their personal contribution caps, or Div 293 tax for higher income earners.

Deloitte's view

In Australia there have been a number of high profile examples of underpayment of wages and superannuation contributions for employees. This has raised concerns of government and regulators that employees in a variety of industries and sectors may become victims of underpayment – either deliberately or because the systems and processes used to manage such obligations are not reviewed regularly. Based on our experience, the overwhelming proportion of employers endeavor to do the right thing, and often in aggregate pay over and above their minimum SG or contractual obligations.

However, superannuation is a regime fundamental to each individual's livelihood upon retirement. Consequently, even the most unintended oversight could result in an employee not receiving the correct level of SG support.

The amnesty provides a generous incentive to employers to investigate and remediate any instances of unpaid superannuation.

Superannuation rules, particularly the way they interact with industrial agreements, can be extremely complex. So much so that even the most astute employers are often unaware that their systems may not be accurately calculating are owed the required superannuation contributions. With the impending introduction of Single Touch Payroll (STP), which will provide greater visibility to employees and the ATO going forward, the short-term amnesty's primary intention to expedite the payment of superannuation owing to employees that may otherwise never be found arguably outweighs the view that the amnesty may be too lenient on noncompliant employers.

Employers looking to assess their historical compliance with SG, whether in the lead up to STP or in response to the amnesty, should be mindful of the timeframes (often several months) to properly assess compliance and ensure remediation is competed within the next 12 months to be covered by the amnesty.

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Hong Kong: Updates on newly proposed tax deductible items

Overview

The Hong Kong Special Administrative Region Budget announced in February 2018 includes a proposal to introduce tax deductions for the following:

- Premiums paid to purchase certified health insurance plans under the Voluntary Health Insurance Scheme (VHIS); and
- Premiums paid to deferred annuities and voluntary contributions made to the Mandatory Provident Fund (MPF).

The government has been working closely with insurers and MPF trustees on implementation details for the proposed deductions.

VHIS policies are health insurance plans that are certified by the Food and Health Bureau. In order to obtain certification, these plans must offer certain features, including guaranteed renewal up to age 100, no lifetime benefit limit, and coverage for pre-existing conditions, etc.

MPF is a retirement scheme for employees in Hong Kong.

Summary of tax deduction proposals in February 2018

Tax deduction for VHIS-certified health insurance premiums	Tax deduction for premiums for taxpayers who purchase certified health insurance products for themselves or their dependents under the VHIS, up to a ceiling of HKD 8,000 per insured person.
Tax deduction for deferred annuity premiums and voluntary MPF contributions	No details were provided. The Insurance Authority will be issuing guidelines.

Developments related to tax deduction for VHIS-certified health insurance premiums

The proposed amendment bill for the VHIS deduction was published in the Hong Kong Government Gazette (the “Gazette”) in May 2018, and it will now be introduced into the Legislative Council for review. The amendment bill provides further clarification on the implementation of the tax relief:

Timeline	Proposed to take effect from year of assessment 2019/2020.

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Deductible expenses	Premiums paid by the taxpayer for himself/herself and specific relatives will be deductible. For this purpose, “specific relatives” include the taxpayer’s spouse, children, parents (or spouse’s parents), grandparents, and siblings who meet certain conditions. There is no limit on the number of specific relatives a taxpayer may include.
Deductible amount	HKD 8,000 per insured person. If the taxpayer has procured multiple VHIS policies, the deduction can be claimed for these policies up to the HKD 8,000 cap. If there is more than one policy holder for a VHIS policy, a deduction may be claimed by each policy holder in equal share. The Commissioner of Inland Revenue Department has discretion to determine whether the premiums paid are commensurate with the risk profile of the insured person. In the case of married couples, the deduction can be claimed by either or both spouses, in their preferred proportion. If a premium that was previously claimed as a deduction is refunded, the taxpayer must notify the Commissioner in writing within three months after the date of the refund.
Holdover of provisional tax	Eligibility to claim a deduction for VHIS-certified health insurance premiums is an acceptable reason to apply for holdover of the 2019/2020 provisional tax.

Developments related to tax deduction for deferred annuity premiums and voluntary MPF contributions

The Financial Services and Treasury Bureau submitted a paper to the Legislative Council in May 2018 on the proposed deduction for deferred annuity premiums and voluntary MPF contributions. The paper contains the following clarifications:

Timeline	Proposed to take effect from year of assessment 2019/2020.
Deductible MPF contributions	Mandatory employee contributions to the MPF are currently deductible up to HKD 18,000 per year of assessment. According to the proposal, a separate deduction would be available for voluntary contributions made to a separate, tax-deductible voluntary contribution account, which would be subject to withdrawal restrictions.
Deductible premiums for deferred annuities	Premiums paid for deferred annuity products that satisfy the following conditions: • Minimum total premium of HKD 180,000 and minimum payment period of five years • Minimum annuity period of 10 years • Annuitization at age 50 or older • Subject to additional disclosure requirements
Maximum deduction	Aggregate limit of HKD 36,000 per year of assessment for MPF voluntary contributions and deferred annuity premiums.

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Deloitte's view

The proposed tax deductions are part of a broader initiative by the government to encourage well-being and retirement planning among taxpayers. However, it will take time before insurers and MPF trustees can develop VHIS, deferred annuity, and MPF products that meet the criteria required for the tax deductions. Once the market begins to gain momentum and the products become more comprehensive, it may be more apparent how the measures will change the way employee benefits are structured and delivered.

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