

# GMS Flash Alert

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## Australia - ATO Updates Guidance on Leave Loading and Superannuation Guarantee

As part of their preparations for entry into Australia's Single Touch Payroll (STP)<sup>1</sup>, many organisations have taken a proactive approach in revisiting their payroll system configurations for superannuation and PAYG withholding. As part of these reviews, many have identified that the superannuation configuration for "leave loading"<sup>2</sup> needs to be adjusted.

In an interesting development, the Australian Taxation Office (ATO) recently updated the guidance on its website regarding leave loading.<sup>3</sup>

### WHY THIS MATTERS

Leave loading has evolved beyond its "paid in respect of lost ability to work overtime" origins and is now paid by employers for a variety of reasons and in different circumstances.

In the lead up to the end of 2018, this issue was circulating among payroll and finance teams causing headaches for all the wrong reasons. The new guidance from ATO, therefore, for many employers, could make it challenging to demonstrate that the leave loading they have paid to employees can be distinguished from, say, a general "holiday bonus" – and, there might be a superannuation guarantee obligation. Employers may need to consider a comprehensive assessment to establish that their superannuation obligations have indeed been met.

Employers with globally mobile workforces should try to check whether their Australian population receives leave loading payments (leave loading is quite a common compensation item in Australia particularly in the energy and natural resources, construction and infrastructure industries).

## Guidance on Leave Loading Updated by ATO

The ATO recently updated the guidance on its website to highlight its long-held view that leave loading should form part of the base for superannuation guarantee ("SG") contributions (i.e., ordinary time earnings). Per SG 2009/2, the only circumstances where the ATO considers that leave loading can be excluded from SG calculations is where it can be demonstrated that leave loading is specifically paid in respect of "the lost ability to work overtime."

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### KPMG NOTE

The practical issue for many employers is that while leave loading may have historically been provided for these specific circumstances, over the course of time, workplace practices mean leave loading is paid to a broader population of employees. In these circumstances, it may be difficult to demonstrate that leave loading can be distinguished from a general "holiday bonus" and a superannuation guarantee obligation can arise.

Employers who pay above the SG may have some flexibility in demonstrating that their obligations have been met; however, a thorough assessment would be required to confirm that this is the case.

Employers should not leave superannuation on leave loading to chance. It is advisable to check your employment agreements and check your payroll configuration – consultation with your professional tax adviser could be helpful in this regard.

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### FOOTNOTES:

1 For an earlier report covering STP, see GMS [Flash Alert 2018-037](#) (22 February 2018).

2 In basic terms, in Australia, leave loading is an additional compensation item typically paid during a period when an employee is on annual leave.

3 For additional information, see the following ATO web pages:

- [Withholding from leave payments for continuing employees](#)
- [The super guarantee charge \(SGC\)](#)
- [Super for employers: How much to pay](#)
- [ATO Community: Is Leave Loading Superable?](#) (ATO blog)

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