

COMMISSIONER'S GUIDELINE

CG-PRT-001:

Payroll tax on superannuation contributions made by an employer

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	01 November 2005	01 November 2005	31 December 2007
2	2 January 2008	1 January 2008	Current

Purpose

This Guideline explains the application of the *Pay-roll Tax Act* ('the Act') to certain superannuation arrangements between employers and their employees.

Wages and superannuation contributions

Generally, all wages paid or payable by an employer are subject to payroll tax.¹ The amount of any superannuation benefit that is taken to be paid by the employer is taxable wages.²

This includes any actual contribution in respect of a person to a **superannuation fund** (see page 3 for definition) that is paid or payable by an employer.³ This may take the form of contributions to an employee's superannuation fund made by way of salary sacrifice from the employee's pre-tax remuneration package. However, contributions to an employee's superannuation fund made by way of a deduction from the employee's after tax wages or salary are not contributions made by the employer and thus are excluded from being a contribution for the purposes of payroll tax.

The following circumstances are also taken to be superannuation contributions for the purposes of payroll tax:

- 1) Setting aside or the obligation to set aside money or anything worth money as part of a superannuation scheme.⁴
- 2) Making, or the obligation to make, a contribution to a superannuation fund of anything that is worth money (a payment 'in kind') is taken to be a contribution to the superannuation fund of that amount of money.⁵

¹ Section 6 of the Act.

² Section 3(1) ('wages', paragraph (d)).

³ Section 3A of the Act.

⁴ Clause 2(2) and 2(5) of the Schedule to the Act.

⁵ Clause 2(3) and 2(5) of the Schedule to the Act.

- 3) Paying or the obligation to pay an amount of administration or other charges in respect of a carrying on of a superannuation fund, whether or not that amount is paid to the fund or another person.⁶
- 4) Contributions paid or payable by a person acting for or in concert with or under an arrangement or undertaking with an employer, whether it is formal or informal and whether it is express or implied.⁷
- 5) Any superannuation guarantee charge imposed on an employer by the *Superannuation Guarantee Charge Act 1992* (Cth) in respect of the employee(s) for which the employer had an individual superannuation guarantee shortfall, other than where the guarantee relates to an amount that has already been taken to be a taxable superannuation benefit.⁸
- 6) A contribution arising from the imposition of the superannuation guarantee charge does not include additional superannuation guarantee charge penalties,⁹ but does include any general interest charge levied on any unpaid superannuation guarantee charge.

Contribution holidays

In some instances, some superannuation schemes have sufficient earnings to meet or reduce the accruing cost of the superannuation benefits to be provided by a superannuation scheme. In this instance, it is possible for an employer to reduce or suspend superannuation contributions. Where no superannuation contribution is required in this circumstance, there is no contribution made by an employer and thus no payroll tax is payable. Similarly, where a contribution is reduced due to the earnings of a superannuation fund, payroll tax is payable on the amount of the reduced contribution.

Lump sum contributions

Where a lump sum is contributed to a superannuation fund by an employer that is in excess of the accruing cost, the full amount is a contribution that is subject to payroll tax at the time the contribution is made, notwithstanding that the contribution may be made to prepay the future accruing cost of the superannuation scheme.

Unregulated or unfunded defined benefit schemes

There are special rules for determining the amount of an employer's contribution to a superannuation fund that is an **Australian superannuation scheme** (see below for definition) that provides a **defined benefit** (see below for definition) and requires the employer to contribute to the scheme at some time and:

- 1) is not a **regulated superannuation fund** (see below for definition); or

⁶ Clause 2(4) and 2(5) of the Schedule to the Act.

⁷ Clause 2(4) and 2(5) of the Schedule to the Act.

⁸ Clause 2(6) of the Schedule to the Act.

⁹ Clause 2(1) ('superannuation guarantee charge') of the Schedule to the Act.

¹⁰ Clause 3 of the Schedule to the Act and regulations 27A to 27G of the *Pay-roll Tax Regulations*.

2) is an **unfunded public sector scheme** (see below for definition).¹⁰

In such cases, the employer's contribution in each payroll tax return period is taken to be an actuarially determined amount. The contribution amount in respect of an employee for each payroll tax return period is an amount that an actuary determines would be sufficient to fully provide for the superannuation entitlement accruing under the scheme.

In calculating the contribution amount, the actuary is required to take into account a prescribed notional earnings rate on the amount, which is the 10-year Commonwealth Bond Yield rate existing on the day on which the determination is made.

The calculation of the required contribution rate by an actuary covers payroll tax returns that are to be lodged during that three-year period. At the expiry of the contribution assessment period, an employer is required to have an actuary recalculate the required contribution amount for the following three-year contribution assessment period.

Other unregulated schemes

Where a superannuation fund is an Australian superannuation scheme but is not a regulated superannuation fund and does not provide defined benefits, then any amounts credited to the fund as an employer's contribution to the scheme is taken to be the payment of a contribution to the scheme by the employer, whether or not an amount is actually paid.¹¹

Definitions

Superannuation fund

A superannuation fund is:

- 1) a fund carried on for the purposes of a superannuation scheme (including a provident or retirement fund or scheme);
- 2) a fund carried on to provide retirement savings accounts within the meaning of the *Retirement Savings Accounts Act 1997* (Cth); or
- 3) the Superannuation Accounts Reserve established by the *Small Superannuation Accounts Act 1995* (Cth).¹²

¹¹ Clause 4 of the Schedule to the Act.

¹² Section 3(1) ('superannuation fund' and 'superannuation scheme') of the Act.

¹³ Clause 2(1) ('defined benefit') of the Schedule to the Act.

Defined benefit

A defined benefit includes a benefit payable under a superannuation scheme that is defined by:

- 1) the amount of an employee's salary at a particular date, whether the date of the employee's termination, retirement or an earlier date;
- 2) the amount of the employee's salary averaged over a period ending on any such date; or
- 3) a declared amount.¹³

Examples of schemes that provide a defined benefit include where a superannuation scheme will pay a benefit on retirement of one year's salary for every five years of service or, an amount specified in a contract, award or other agreement.

Australian superannuation scheme

An Australian superannuation scheme is a superannuation scheme that:

- 1) was established in Australia or has an asset that is situated in Australia; and
- 2) has its central management and control in Australia.¹⁴

Regulated superannuation funds

A regulated superannuation fund is a fund that is regulated under the *Superannuation (Supervision) Act 1993* (Cth).¹⁵ The majority of employers contribute to regulated superannuation funds. Generally, regulated superannuation funds (excluding exempt public sector superannuation funds) are complying funds for the purposes of the *Income Tax Assessment Act*.

Unfunded public sector scheme

A public sector scheme is a superannuation fund established by or under a Commonwealth, State or Territory law or established under the authority of the Commonwealth, a State or Territory or a municipal corporation, another local governing body or a public authority constituted by or under a Commonwealth, State or Territory law.

An unfunded public sector scheme is a public sector scheme that is not funded in advance in accordance with actuarial advice at a level that is reasonably expected by the actuary to be adequate to provide for present and prospective liabilities in respect of benefits under the scheme.¹⁶

¹⁴ Clause 2(1) ('Australian superannuation scheme') of the Schedule to the Act.

¹⁵ Clause 2(1) ('regulated superannuation scheme') of the Schedule to the Act; section 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth).

¹⁶ Clause 2(1) ('unfunded public sector scheme') of the Schedule to the Act; section 10 ('public sector superannuation scheme') of the *Superannuation Industry (Supervision) Act 1993* (Cth).

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Guidelines are available from Territory Revenue Offices website.

Refer to the *Pay-roll Tax Act* for precise information about payroll tax on superannuation benefits.

Date of effect

This version of the Guideline takes effect from 1 January 2008.



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