

Public advice and guidance compendium – PCG 2020/6

❶ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Practical Compliance Guideline PCG 2019/D8 *Superannuation contributions made to the Small Business Superannuation Clearing House - compliance approach to timing of income tax deductions*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
1	General comments We support the proposed compliance approach (including retrospective application). It is a sensible approach to provide deductibility for super contributions when transferred to the Small Business Superannuation Clearing House (SBSCH).	Noted.
2	Extending the compliance approach to commercial clearing houses The compliance approach should apply to all clearing houses (not just the SBSCH) and apply retrospectively. If the same compliance approach on tax deductibility applied to payments made before 30 June to all clearing houses, then businesses are in a simpler administrative regime. We note that the business would then gain tax deductibility and also meet their super guarantee compliance (which is not due until 28 July).	<p>We sought community feedback during the consultation period on the draft Guideline to understand the commercial reasons for expanding the compliance approach to other 'commercial' clearing houses, including the benefits or impacts for employers and other stakeholders. The responses received did not provide us with sufficient basis to proceed with an expansion of the compliance approach. Further consultation would be necessary to consider an expansion, though any such consultation would be deferred given the current environment and priorities relating to advice on COVID-19 impacts.</p> <p>To provide certainty to employers using the SBSCH prior to the end of the 2019–20 financial year, the decision has been made to finalise this Guideline with the existing scope.</p> <p>Note: Section 23B of the <i>Superannuation Guarantee (Administration) Act 1992</i> provides that, for super guarantee purposes, employer payments made to an approved clearing house are taken to be contributions made on the day they are accepted by the approved clearing house. The SBSCH is the only approved clearing house.</p>

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3	Earlier compliance approaches – SBSCH I understood this compliance approach to have already been in place in accordance with what I read on the ATO website prior to 30 June 2019 and could be relied upon.	The compliance approach previously published on ato.gov.au only applied to employers that made payments through the SBSCH for the year ended 30 June 2019. This final Guideline formalises that approach for years before and after its issue.
4	Circumstances outside the employer's control We understand and accept the conditions of 'all relevant information', 'dishonoured by the super fund', 'returned to you by the SBSCH' by endorsing the approach. We note however that it is often outside the control of the employer as to whether a payment is ultimately accepted by the super fund as it is dependent on the information provided by the employee. The penalty of loss of tax deductibility remains unreasonable when the employer has performed all reasonable steps to make payment and receive the tax deduction through no fault of their own.	We note the concerns on the reliance of an employer upon information provided by an employee in meeting their super obligations and the timing of deductions for payments made. However, we consider it important to maintain the existing arrangements to preserve the integrity of the super system. We also note that if the terms of this final Guideline do not apply and the payment is eventually made in the next income year, it may still be deductible in the next income year, provided the employer has not elected to use the contribution as a late payment to be offset against any amounts of the super guarantee charge.
5	Extending the compliance approach to quarterly payments We would like the same compliance approach to also apply to each quarterly payment – that is, if payment (and all required information provided) is made to a clearing house on or before 28 July then the employer can be deemed to have met both their super guarantee and tax deductibility requirements.	The scope of this Guideline is limited to the compliance approach to the timing of deductions for super contributions made through the SBSCH before close of business on the last business day on or before the last business day of the income year.
6	SBSCH status For completeness, paragraph 5 or footnote 6 of the draft Guideline, when finalised, should clearly state that the SBSCH is the only approved clearing house (see section 24 of the <i>Superannuation Guarantee (Administration) Regulations 2018</i>).	Agreed. Paragraph 5 has been amended in the final Guideline to reflect that the SBSCH is the only approved clearing house and it is administered by the ATO.
7	Eligibility to access the SBSCH We note access to the SBSCH is restricted to small businesses with 19 or fewer employees. This limit prevents	This is addressed in paragraph 5 of the final Guideline. See also clause 2 of the Clearing house terms and conditions of use and access on ato.gov.au which provides that employers with 19 or fewer employees, or with an annual

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	businesses that otherwise are small businesses from benefiting from the SBSCH. We encourage access to the SBSCH to be expanded to align with the definition of a small business – that is, any business with an annual aggregated turnover of less than \$10 million.	aggregated turnover of less than \$10 million, are eligible to access and use the SBSCH.
8	When is a payment made to the SBSCH? We would recommend an important adjustment at the first dot point in paragraph 8 of the draft Guideline to explain what is meant by 'you...made payments to the SBSCH'. For example, does it mean that the ATO has received cleared funds from an employer? Or does it mean that the funds have left the employer's bank account but have not yet been deposited with the ATO?	<p>Having regard to all the requirements of paragraph 8 of the final Guideline, we do not consider further clarification of the first dot point necessary.</p> <p>An employer can claim a deduction for the payment of super contributions made through the SBSCH in the year they are made. This would be at the time of making the payment to the SBSCH (that is, if the amount leaves the employer's bank account on or before 30 June) where the SBSCH accepts the payment.</p> <p>For example, funds leave an employer's bank account on 29 June 2020 and are not returned by the SBSCH. Provided all the requirements of paragraph 8 of the final Guideline are met, the ATO would not take compliance action to consider if the funds were received by the trustee of the super fund or retirement savings account in the 2019-20 financial year, for the purposes of the employer's entitlement to claim an income tax deduction.</p> <p>If the payment is not accepted by the SBSCH, and the payment is made in the subsequent financial year, the employer cannot claim the deduction in the earlier financial year.</p>

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