

SCD 97/D1 - Superannuation contributions: when has a contributed amount been paid or transferred, and when has a pension or annuity 'begun to be paid'?



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This document has been finalised by SCD 98/1.

Draft Superannuation Contributions Determinations (SCDs) represent the preliminary, though considered, views of the ATO. Draft SCDs may not be relied on. Only final SCDs are authoritative statements of the ATO.

Draft Superannuation Contributions Determination

Superannuation contributions: when has a contributed amount been paid or transferred, and when has a pension or annuity 'begun to be paid'?

1. The superannuation contributions tax ('surcharge') legislation imposes reporting obligations and assessment liabilities on the 'holder of surchargeable contributions' (see, for example, sections 10 and 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*).
2. A provider is the holder of surchargeable contributions where the provider holds any contributed amounts paid for or by the member, or the member is a member of an unfunded defined benefits fund. A provider becomes the new holder of surchargeable contributions when the contributions are transferred from a former provider to the new provider.
3. A member is the holder of surchargeable contributions when 'amounts were paid' or 'the pension or annuity has begun to be paid' to that person.

When are contributed amounts paid to a member?

4. An amount is paid to a member when the cheque is received by the member, unless the cheque is subsequently dishonoured (see *Tilley v. Official Receiver in Bankruptcy* (1960) 103 CLR 529; 34 ALJR 361; [1961] ALR 83; 20 ABC 108 (*Tilley's case*)). If the cheque is dishonoured, no amount is paid.
5. A cheque is deemed to have been received on the day that it would ordinarily have been received in the post, usually three working days, unless the contrary is shown. This is consistent with the *Acts Interpretation Act 1901*.
6. If a cheque is post-dated, the amount is paid on the later of the day the cheque is received and the date shown on the cheque. This is because the cheque cannot be presented before the date shown (subsection 61(2) of the *Cheques and Payment Orders Act 1986*). Again, no amount is paid if the cheque is dishonoured after presentation.

Example 1

7. A superannuation provider posted a cheque to a member on 11 August 1997 that included surchargeable contributions for the 1997/98 financial year. The member received the cheque on 13 August 1997. The cheque was cleared on 16 August 1997. The amount was paid on 13 August 1997, as the member received the cheque on that date. However, if the cheque was dishonoured, no amount was paid.

When are surchargeable contributions transferred to a new provider?

8. A provider is the new holder of surchargeable contributions when the contributions are transferred from the former provider to the new provider. Similarly, a life company or registered organisation is the new holder of surchargeable contributions when the contributions are transferred to the life company or registered organisation to purchase a deferred annuity.

9. Surchargeable contributions are transferred to a new provider when the cheque is received by the new provider, unless the cheque is subsequently dishonoured (*Tilley's* case). If the cheque is dishonoured, no amount is paid. If the amount is paid in instalments, the surchargeable contributions are transferred when the first instalment is received.

10. A 'deferred annuity' is not an annuity but is merely an agreement that may lead to an annuity at a later date. For this reason, a deferred annuity is not a contract under which an annuity can be said to have 'begun to be paid'. Therefore, the holder of the contributions is the provider of the deferred annuity, i.e., the life company or registered organisation, and not the member.

Example 2

11. *Superannuation Provider A transferred an amount that included surchargeable contributions for the 1997/98 financial year to Superannuation Provider B. Provider A posted the first of four cheques to Provider B on 11 August 1997. Provider B received the first cheque on 13 August 1997. The cheque was cleared on 16 August 1997. The amount was paid on 13 August 1997, as Provider B received the first cheque on that date. However, if the cheque was dishonoured, no amount was paid.*

Example 3

12. *A member signed a 'deferred annuity' contract on 10 August 1997, based on contributions that included surchargeable contributions for the 1997/98 financial year. The provider posted the cheque to a life company on 11 August 1997. The life company received the cheque on 13 August 1997. The cheque was cleared on 16 August 1997. The amount was transferred on 13 August 1997, as the life company received the cheque on that date. However, if the cheque was dishonoured, no amount was paid.*

When has a pension or annuity 'begun to be paid'?

13. A pension or annuity is 'begun to be paid' at the beginning of the first day of the period to which the first payment of the pension or annuity relates. For annuities, typically, this is the day the contract was signed.

14. This interpretation is consistent with the approach for working out the deductible amount, and the approach for reasonable benefit limits purposes, under the *Income Tax Assessment Act 1936*.

Example 4

15. *A member signed a contract for an annuity on 14 August 1997, based on contributions that included surchargeable contributions for the 1997/98 financial year. The annuity was to be paid annually, and the first payment made on 13 August 1998 for the year to that date. The annuity 'began to be paid' on 14 August 1997, the first day of the period to which the first payment of the annuity relates.*

Your comments

16. If you want to comment on this draft Superannuation Contributions Determination, please send your comments by: Friday 30 January 1998

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