


# ***IT 19 - Superannuation arrangements for self-employed and unsupported employees***

 This cover sheet is provided for information only. It does not form part of *IT 19 - Superannuation arrangements for self-employed and unsupported employees*

This document has been Withdrawn.

There is a [Withdrawal notice](#) for this document.

TAXATION RULING NO. IT 19

F.O.I. EMBARGO: May be released

REF

N.O. REF: L80/43 P3 f77

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED: 12.06.81

F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1101107

SUPERANNUATION

82AAS

SELF-EMPLOYED PERSONS

82AAT

UNSUPPORTED EMPLOYEES

PREAMBLE

The following guidelines were issued in relation to the amendments made to the Assessment Act concerning the provision of outright deductions of up to \$1200 for certain classes of taxpayers - viz., self-employed persons and "unsupported" employees - in respect of contributions made by them after 19 August 1980 to qualifying superannuation funds.

FACTS

2. Section 82AAS prescribes the conditions under which the contributions which a person makes to a qualifying superannuation fund are eligible for deduction under the provisions of section 82AAT. Broadly, a person is an eligible person unless he or she is, at any time during the year of income, a person in respect of whom another person has provided superannuation benefits.

RULING

3. For the purposes of section 82AAS, it has been decided that only the following two kinds of situations would constitute the provision of superannuation benefits in relation to a taxpayer by a person other than the taxpayer:

- (a) if contributions are made by that other person during the year of income to a superannuation fund for the benefit of the taxpayer or a formal commitment has been made by that other person to make contributions to a superannuation fund for the benefit of the taxpayer in relation to that year of income at a future time; or
- (b) if the taxpayer is in the year of income a member of a scheme constituted by or under a law of the Commonwealth or of State or Territory under which payment of benefits upon retirement or death may be made to employees of the Commonwealth, State or Territory and where the payment of benefits can be expected to take into account the taxpayer's service in that year.

In other words, it is considered that the context of the concession requires the above more limited meaning to be given to the term "superannuation benefits" than as that term is defined in section 6. (Application of section 6 definition, for example, might have rendered a person ineligible for deductions

under section 82AAT merely because he or she had effected life insurance cover maturing on retirement since that cover would provide for "individual personal benefits" such as to fall within a literal reading of "superannuation benefits" as defined).

4. Subsection 82AAS(3) provides the Commissioner with a discretion to treat a person as an eligible person for purposes of the deduction where the circumstances of superannuation support referred to in the preceding paragraph are in existence in relation to the person for only part of the income year. Cases will frequently arise where a taxpayer has, during the course of the income year, either joined or left the employ of a person who participates in the provision of superannuation benefits for his or her employees. It is considered, in such cases, as a general rule, that the discretion under subsection (3) ought to be exercised in favour of a taxpayer if there is no evidence that the taxpayer has by design manipulated his or her circumstances so as to take advantage of both employer support and deductibility under section 82AAT in the same year.

5. It is not proposed that the discretion under subsection 82AAS(3) be exercised to treat as an eligible person in relation to a year of income an employee who opts out of supporting arrangements, whilst remaining in the employ of an employer who continues to hold out availability of superannuation fund membership to that employee in a year of income, so as to obtain the benefit of the new deduction. In subsequent years of income, when no superannuation benefits are attributable to employer contributions, such an employee would be an eligible person for the purposes of the section 82AAT deduction.

6. It is noted in this context that the existence of an accumulation for the benefit of a taxpayer held in an employer-supported superannuation fund which relates to contributions for an earlier year of income or earlier years of income does not constitute the provision of superannuation benefits by another person attributable to a later year of income. Consequently, such an accumulation (including current earnings on it) would not render the taxpayer ineligible for deductions under section 82AAT in respect of personal contributions made in that subsequent year or years.

7. In further explanation of what are to be regarded as "superannuation benefits" in the context of Subdivision AB as discussed in paragraph 3, it is also noted that the provision of death cover or death/disability cover that is effected by the trustee of a superannuation fund is to be regarded as the provision of superannuation benefits.

8. Where a person who has retired from previous employment and is in receipt of a superannuation pension becomes self-employed and seeks to establish a superannuation fund for subsequent retirement, the current entitlement to pension does not render the person ineligible for the purposes of section 82AAS.

9. A number of employees of statutory authorities in Victoria,

Tasmania, and Queensland do not become contributors to the State Government sponsored superannuation schemes but are entitled, under the relevant legislation, to receive retiring benefits of such a nature as to satisfy the definition of superannuation benefits in the income tax law (see sub-subparagraph 82AAS(2(b)(ii)(B)). By way of illustration, Queensland railway workers are entitled to a retiring allowance under clause 26(b) of By-law 690 made under the Queensland Railways Act. Employees covered by arrangements of this nature are not eligible persons for purposes of the section 82AAT deduction.

COMMISSIONER OF TAXATION