



PCG 2019/D8 (Finalised) - Superannuation contributions made to the Small Business Superannuation Clearing House - compliance approach to timing of income tax deductions

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 There is a Compendium for this document: **PCG 2020/6EC** .
This document has been finalised by PCG 2020/6.



Superannuation contributions made to the Small Business Superannuation Clearing House – compliance approach to timing of income tax deductions

❗ Relying on this draft Guideline

This Practical Compliance Guideline is a draft for consultation purposes only. When the final Guideline issues, it will have the following preamble:

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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What this draft Guideline is about

1. This draft Guideline¹ describes circumstances in which the Commissioner will not apply compliance resources to determine which income year an employer is entitled to claim income tax deductions for superannuation contributions made through the Small Business Superannuation Clearing House (SBSCH) to a super fund or retirement savings account (RSA).

Background

2. Section 290-60 of the *Income Tax Assessment Act 1997* (ITAA 1997) allows an employer to claim income tax deductions for contributions made to a super fund or RSA,

¹ All further references to 'this Guideline' refer to the Guideline as it will read when finalised. Note that this Guideline will not take effect until finalised.

on behalf of employees, where certain conditions are met. The income tax deduction is only available in the income year the contribution is made.²

3. Super contributions are made to a super provider or RSA when the payments are received by the trustee of a complying superannuation fund or a RSA.³

4. Section 23B of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) specifies that employer payments made to an approved clearing house are taken to be contributions made on the day they are accepted⁴ by the approved clearing house. This is only for the purpose of determining whether an employer is liable for the super guarantee charge⁵ and does not extend to determining when an employer is entitled to claim a tax deduction.

5. The SBSCH is an approved clearing house administered by the ATO.⁶ The SBSCH is a free service that small businesses with 19 or fewer employees or an annual aggregated turnover of less than \$10 million may use to make super guarantee contributions. The service aims to reduce compliance costs for small business employers by simplifying and streamlining the process of making employee super contributions. It allows employers to make a single lump payment of their contributions to the SBSCH each quarter. That lump sum payment is broken into individual payments to be contributed to each employee's respective super fund or RSA.

6. There may be a period of time between an employer's payment to the SBSCH and the trustee of a complying super fund receiving the contribution. The SBSCH may be unavailable over a weekend close to the end of the financial year for scheduled system maintenance.⁷ Payments made towards the end of an income year may not be received by the trustee of a complying super fund or a RSA in the same income year. This may impact on when an employer is entitled to an income tax deduction for the super contributions.

Date of effect

7. When finalised, this Guideline is proposed to apply both before and after its date of issue.

Who this Guideline applies to

8. This Guideline applies to you if:

- you, as an employer, or your nominated representative on your behalf, made payments to the SBSCH on behalf of your employee/s before close of business on the last business day of the income year in which you deduct the contribution, and

² Subsection 290-60(3) of the ITAA 1997.

³ *Liwszyc v Commissioner of Taxation* [2014] FCA 112 at [61–63] and [69]. For guidance on when a super contribution is made see paragraphs 182 to 210 of Taxation Ruling TR 2010/1 *Income Tax: superannuation contributions*.

⁴ See clauses 10, 11 and 12 of the [Clearing house terms and conditions](#) for when payments are accepted by the SBSCH.

⁵ Contributions made to a clearing house, other than an approved clearing house are taken to be made when they are received by the super fund or RSA. See Superannuation Guarantee Determination SGD 2005/2 *Superannuation guarantee: is a contribution to a complying superannuation fund or a retirement savings account for the benefit of an employee made when the employer makes the contribution to a clearing house (other than an approved clearing house)?*.

⁶ Section 79A of the SGAA and regulation 24 of the *Superannuation Guarantee (Administration) Regulations 2018*.

⁷ System maintenance information is available at [System maintenance](#)

- at the time of making the payments, you provided all relevant information to enable the SBSCH to process the payment to the employees' super fund accounts or RSA⁸, and
- the payment has not been dishonoured by the super fund or RSA⁹ or returned to you by the SBSCH¹⁰, and
- you would otherwise be entitled to the income tax deduction.¹¹

9. This approach will not apply where you deduct a contribution in an income year where the payment is made through a clearing house other than the SBSCH (a commercial clearing house). Typically, the contract between an employer and the commercial clearing house will set out the terms and conditions of the agreement between them, including the service standards for processing payments. Some commercial clearing houses will indemnify employers for any loss incurred where the clearing house was in breach of their service standard. Employers should check the service standards with their clearing house.

Our compliance approach

10. We will not apply compliance resources to consider whether the contribution you made was received by the trustee of the super fund or RSA in the same income year in which you made the payment to the SBSCH, provided you made the payment to SBSCH before close of business on the last business day on or before 30 June.

11. As a consequence of this compliance approach, where the conditions in paragraph 8 of this Guideline are satisfied, you do not need to check with your employees' super funds to determine in which income year the contributions were received from the SBSCH prior to claiming an income tax deduction in the income year the payment was made to the SBSCH.

12. You will need to check that you meet the requirements in paragraph 8 of this Guideline for each year you wish to rely on this Guideline.

13. While system availability mentioned in paragraph 6 of this Guideline may impact on the timing of the receipt of the payments by the trustee of a complying super fund or a RSA from the SBSCH, our compliance approach outlined in paragraph 10 of this Guideline is not limited to circumstances where this has occurred.

Commissioner of Taxation

21 November 2019

⁸ See clauses 7 and 8 of the [Clearing house terms and conditions](#)

⁹ A super fund may dishonour the payment where the information you provided the SBSCH was incorrect insofar as it could not receive and allocate the payment to the employee's super fund account.

¹⁰ The SBSCH may return a payment where you have not provided payment instructions or provided incorrect payment instructions. See, for example, clauses 10, 11 and 12 of the [Clearing house terms and conditions](#)

¹¹ That is, you meet all other requirements for deducting the contribution under Subdivision 290-B of the ITAA 1997. Note section 290-95 of the ITAA 1997 provides that no deduction is allowed if you elect to apply this amount as a late payment offset under section 23A of the SGAA.

Your comments

14. You are invited to comment on this draft Guideline, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

In particular, we are interested in your views on:

- whether there are any practical issues in relation to the ability of an employer that is a small business to meet the conditions for the application of the compliance approach
- the potential application of the compliance approach in respect of payments made by employers through other clearing houses, noting that only payments made through the ATO SBSCH are deemed for super guarantee purposes as made at the time the SBSCH accepts payment.

15. A compendium of comments is prepared for the consideration of the relevant Public Advice and Guidance Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments
- be published on www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: **17 January 2020**

Contact officer details have been removed following publication of the final guideline.

References

ATOlaw topic(s)	Superannuation ~~ Employers ~~ Making contributions Superannuation ~~ Employers ~~ Other
Legislative references	ITAA 1997 Subdiv 290-B ITAA 1997 290-60 ITAA 1997 290-60(3) ITAA 1997 290-95 SGAA 1992 23A SGAA 1992 23B SGAA 1992 79A SGAR 2018 24
Related Rulings/Determinations	SGD 2005/2 TR 2010/1
Case references	Liwszyc v Commissioner of Taxation [2014] FCA 112; 218 FCR 334; 2014 ATC 20-441; 94 ATR 16; [2014] ALMD 4472
Other references	Small Business Superannuation Clearing House Clearing house terms and conditions
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