




PS LA 2004/1 (Withdrawn) - Employer's Reporting Obligations for Superannuation Contributions

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 This practice statement is withdrawn as at 11 May 2007.

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FOI status: may be released

This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by ATO officers unless doing so creates unintended consequences. Where this occurs ATO officers must follow their Business Line's escalation process.

SUBJECT: **Employer's Reporting Obligations for Superannuation Contributions**

PURPOSE: **To outline the circumstances in which an employer will be regarded as having satisfied their reporting obligations under the *Superannuation Guarantee (Administration) Act 1992*.**

STATEMENT

1. This Practice Statement sets out the Tax Office's approach to the administration of the employer reporting requirements in section 23A of the *Superannuation Guarantee (Administration) Act 1992* (the SGAA) for the period of 1 July 2003 to 31 December 2004.¹
2. From 1 January 2005, employers are not required to give their employees a report on the superannuation guarantee contributions made on or after 1 January 2005 for the benefit of the employees. *Taxation Laws Amendment (Superannuation Reporting) Act 2004* (Act No 142 of 2004), which received Royal Assent on 14 December 2004, amended the SGAA to repeal section 23A.
3. Section 23A required an employer who made a superannuation guarantee contribution to an employee's accumulation fund or retirement savings account (defined benefit funds are excluded) for the benefit of their employees that reduced the rate of the employer's charge percentage under section 23 to give the employee a report on the contributions. Subsection 23A(3) provided that the report was to be given by the employer within 30 days of the employer making the contribution.
4. However, for practical purposes the Tax Office regarded employers as having adequately complied with subsection 23A(3) for a quarter if they gave the relevant reports to their employees within 30 days of the *final* contribution being made for all employees for that quarter.

¹ All legislative references are to the SGAA unless otherwise stated.

5. For example, an employer has 10 casual employees. One employee leaves on 30 July 2004 and two employees leave on 15 August 2004. The employer makes the contributions for these employees on 20 August 2004. The employer however makes the final contributions covering all employees on 30 September 2004. In accordance with this Practice Statement, the employer may report to all of the employees, including the three who left, by 30 October 2004 (i.e., within 30 days after the final contribution was made that reduces the employer's charge percentage for the quarter).
6. Contributions made up to 28 days after the end of a quarter may be taken into account as having been made in that quarter: subsection 23(6). The 30 days mentioned in paragraph 4 begins to run from the date on which the employer's last contribution which counts towards that quarter is made, which could be up to 28 days after the end of the quarter.
7. The requirement to give a report to employees within 30 days of the final contribution being made for a quarter was a minimum requirement. An employer may have given a report every time they made a contribution to a fund for the benefit of their eligible employees.
8. Each report was required to be in writing and must have included the following information:
 - the amount of the contributions; and
 - the name of the superannuation provider; and
 - where the employer has the information, the employee's account or membership number.
9. There was no specific format required for the report. Examples of formats the employer may have used include the following, so long as the required information was included in every case:
 - a letter to the employee;
 - email, if the employee consents to receiving reports electronically²;
 - a written notification from the employer's business software package, eg, a payslip stating that contributions have been made to the fund as detailed on the payslip;
 - if available, a copy of a receipt for contributions from the superannuation provider.
10. An employer must keep records of the contributions they have made and the way in which they fulfilled the reporting requirements: see section 79 of the SGAA.

EXPLANATION

11. From 1 July 2003, employers have been required to make superannuation guarantee contributions for the benefit of certain of their employees on a quarterly basis to reduce their charge percentage under the SGAA. Before 1 July 2003, employers were required to make superannuation guarantee contributions to reduce their charge percentage on an annual basis. The SGAA was amended by the *Taxation Laws Amendment (Superannuation) Act (No 2) 2002* to effect this move from an annual to a quarterly regime.

² See subsection 9(1) of the *Electronic Transactions Act 1999*.

12. As part of these changes, a reporting requirement was imposed on employers through the insertion of section 23A into the SGAA³. The reporting requirement was introduced so that employees would know what superannuation contributions have been made on their behalf and the destination of the contributions.
13. The policy objective of the amending Act, as outlined in the Explanatory Memorandum (EM), is to encourage employers to make regular contributions by improving the application, efficiency and effectiveness of the superannuation guarantee system, while not imposing significant additional costs on employers. The EM also stresses the importance of 'early identification of non-compliance amongst employers'.
14. We consider that the flexible approach of regarding employers as meeting their reporting obligations where they give employees at least one written report for each quarter within 30 days after the final contribution has been made for that quarter strikes a reasonable balance between allowing sufficiently early identification of non-compliance by employers and keeping costs for employers to reasonably low levels.
15. The Tax Office worked with employers, especially in the first two quarters of the new regime, to help them to comply with the new obligations. In general court-imposed penalties will be sought only in cases of significant non-compliance, such as where an employer continually failed to report, or provided a false or misleading report.
16. A fine of up to 30 penalty units may be imposed on an employer who is convicted of failing to report a contribution to an employee as required. (A penalty unit is currently equivalent to \$110⁴). A penalty of up to 12 months imprisonment may be imposed on an employer who is convicted of making a false or misleading report.⁵

subject references: Superannuation Guarantee; Reporting

legislative references: Superannuation Guarantee (Administration) Act 1992
section 23
Superannuation Guarantee (Administration) Act 1992
subsection 23(6)
Superannuation Guarantee (Administration) Act 1992
section 23A
Superannuation Guarantee (Administration) Act 1992
section 79

related public rulings:

related practice statements:

case references:

³ Section 23A was repealed, with effect from 14 December 2004, for contributions made on or after 1 January 2005

⁴ Section 4AA of the *Crimes Act 1914*.

⁵ See sections 137.1 and 137.2 of the *Criminal Code*.

file references:

04/52

Date issued:

7 January 2004

Amendments

3 June 2004; contact details updated

22 July 2005 repeal of section 23A of SGAA

Date of effect:

1 July 2003