



# ***PS LA 2006/13 - Remission of penalties that apply for failing to report employer and total contributions in the approved form***

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## Practice Statement Law Administration

**PS LA 2006/13**

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**FOI status: may be released**

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*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 Tax office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax office staff must follow their business line's escalation process.*

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<b>SUBJECT:</b>	<b>Remission of penalties that apply for failing to report employer and total contributions in the approved form</b>
<b>PURPOSE:</b>	<b>To set out the guidelines for remission of the administrative penalties that apply under subsections 78(1) and 78A(1) of the <i>Superannuation Guarantee (Administration) Act 1992</i> where a superannuation provider fails to report employer and total contributions in the approved form for the 2005-06 financial year</b>

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### BACKGROUND

1. Under the *Superannuation Guarantee (Administration) Act 1992* (the SGAA), superannuation providers<sup>1</sup> are required to give the Commissioner a statement on an annual basis<sup>2</sup> which sets out:
  - the total of all contributions made by an employer<sup>3</sup> on behalf of an employee to the superannuation fund or retirement savings account (RSA) in a year,<sup>4</sup> and
  - the total of all contributions made to the fund or RSA for the benefit of that employee in the year.<sup>5</sup>

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<sup>1</sup> The term 'superannuation provider' is defined in section 56 of the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003* and means the trustee of a complying superannuation fund, the trustee of a constitutionally protected fund or the provider of a retirement savings account.

<sup>2</sup> For the 2005-06 financial year, superannuation providers are required to lodge their annual statement with the Tax Office either electronically using Superannuation member contributions statement (MCS) – version 7.0, or on paper using the *Superannuation member contributions statements* (NAT 2710).

<sup>3</sup> Under subsection 6(2) of the SGAA, a contribution made by an employer includes a contribution made on behalf of the employer.

<sup>4</sup> Paragraph 78(3)(a) of the SGAA.

<sup>5</sup> Paragraph 78(3)(b) of the SGAA.

2. The statement must be provided to the Commissioner in the approved form<sup>6</sup> by the lodgment due date for the year<sup>7</sup>. A superannuation provider is only required to give the Commissioner a statement in the approved form in respect of employees who had a contribution made for their benefit by an employer in the year.<sup>8</sup>
3. If a superannuation provider transfers an amount to another superannuation fund or RSA, the superannuation provider must give the other fund or RSA a statement in the approved form that sets out details of employer and total contributions transferred<sup>9</sup>. The statement must be provided within 30 days after the day on which the amount is transferred.<sup>10</sup>
4. An administrative penalty of 5 penalty units<sup>11</sup> applies for each person for whom the superannuation provider fails to report within the prescribed time and in the approved form. A penalty unit is currently equivalent to \$110.<sup>12</sup> The Commissioner has the discretion to remit all or part of the penalty.<sup>13</sup>
5. The Commissioner must give the superannuation provider a written notice of the superannuation provider's liability to pay the penalty and of the reasons why the penalty has been imposed. However, the Commissioner is not required to give reasons if he decides to remit the penalty in full.<sup>14</sup>
6. If the Commissioner refuses to any extent to remit the penalty and the amount of penalty payable after the refusal is more than 2 penalty units, then the superannuation provider may lodge an objection against the decision.<sup>15</sup>

## STATEMENT

### Remission guidelines for the reporting period from 1 July 2005 to 30 June 2006

7. The remission guidelines contained in paragraphs 9 to 14 apply to penalties imposed under sections 78 and 78A of the SGAA, where a superannuation provider fails to report employer and total contributions made or transferred during the reporting period from 1 July 2005 to 30 June 2006.
- 7A. Sections 78 and 78A of the SGAA were repealed by the *Tax Laws Amendment (Simplified Superannuation) Act 2007*. These sections do not apply to things that are done or events that have occurred on or after 1 July 2007. Superannuation reporting requirements are now contained in Division 390 of Schedule 1 to the *Taxation Administration Act 1953*.

<sup>6</sup> The term 'approved form' is defined in section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

<sup>7</sup> For self managed superannuation funds, the due date for lodging an MCS is 31 March each year. However, for the 2005-06 financial year self managed superannuation funds are allowed to lodge an MCS by the due date for lodging their Fund income tax and regulatory return. For all other superannuation funds and RSAs the due date for lodging an MCS is 31 October each year.

<sup>8</sup> Subsection 78(3) of the SGAA.

<sup>9</sup> Subsection 78A(3) of the SGAA.

<sup>10</sup> Subsection 78A(1) of the SGAA.

<sup>11</sup> Subsections 78(2) and 78A(2) of the SGAA. Under subsection 4B(3) of the *Crimes Act 1914*, a penalty not exceeding 25 penalty units may be imposed by the court if the superannuation provider is a body corporate.

<sup>12</sup> Section 4AA of the *Crimes Act 1914*.

<sup>13</sup> Subsection 298-20(1) of Schedule 1 to the TAA.

<sup>14</sup> Section 298-10 of Schedule 1 to the TAA.

<sup>15</sup> Subsection 298-20(3) of Schedule 1 to the TAA.

8. The remission guidelines do not apply to penalties imposed for failing to report contributions under the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003*. Superannuation providers have been required to report for Super Co-contribution purposes from 1 July 2003 and should have the necessary information recorded on their systems to satisfy the Super Co-contribution reporting requirements.
9. The Commissioner regards the reporting period from 1 July 2005 to 30 June 2006 to be an introductory period for the superannuation guarantee (SG) reporting requirements. Due to the retrospective nature of the law the Commissioner recognises that superannuation providers may experience difficulties in satisfying their SG reporting obligations for the introductory period.
10. The Commissioner also recognises that non-compliance by superannuation providers with the SG reporting requirements for the introductory period may be the result of factors beyond their control, or as a result of a lack of knowledge and/or business readiness rather than a non-compliant attitude.
11. It is acknowledged that, despite a superannuation provider's best efforts to satisfy its SG reporting obligations, genuine mistakes and misunderstandings may occur. Therefore, superannuation providers will be provided with assistance and support as the first step to improving compliance with the SG reporting requirements for the introductory period.
12. Circumstances where the Commissioner would generally consider it appropriate to remit the penalty in full would include (but are not limited to) where:
  - the superannuation provider has not provided contribution details to another fund or RSA as part of a rollover or transfer during the introductory period, as they were unaware of the requirement to do so at the time the transfer took place
  - the superannuation provider is unable to report the required information to the Tax Office for part or all of the introductory period as the information was not provided to them by the transferring fund or RSA
  - the superannuation provider has substantially complied with its reporting obligations for the introductory period by reporting all of the relevant information it has recorded on its systems for the period, or
  - the superannuation provider has been unable to report for the introductory period as it does not have the relevant information recorded on its systems.
13. However, the Commissioner would not consider it appropriate to remit the penalty in full where:
  - the superannuation provider has consistently failed to lodge a Superannuation member contributions statement (MCS) in previous years
  - the superannuation provider has failed to respond to a written notice under section 77 of the SGAA, for example where the Commissioner has requested details of contributions made by the employer<sup>16</sup>

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<sup>16</sup> Under section 77 of the SGAA, the Commissioner may give a person a written notice requiring the person to provide any information the Commissioner requires, to attend before the Commissioner or to produce to the Commissioner any documents the person has in their custody.

- the superannuation provider has failed to make a genuine attempt to satisfy its SG reporting requirements for the introductory period, or
  - the superannuation provider has taken steps to hinder or obstruct<sup>17</sup> a Tax Officer from finding out about the superannuation provider's failure to satisfy its reporting requirements.
14. Decisions will be made on a case by case basis taking into account the individual circumstances of the superannuation provider and the effort the superannuation provider has made to comply with the SG reporting requirements. Any decision to remit penalties will be made in accordance with the Tax Office's compliance model and the taxpayers' charter.

## EXPLANATION

15. For financial years before 1 July 2005, superannuation providers were required to report contributions to the Tax Office for superannuation contributions surcharge purposes on an annual basis.<sup>18</sup> This reporting requirement was removed as a result of the abolition of the surcharge from 1 July 2005.
16. The Minister for Revenue and Assistant Treasurer announced in a Press Release on 2 February 2006 that the practice of requiring superannuation providers to report contributions to the Tax Office on an annual basis would continue.<sup>19</sup>
17. The reason for continuing the reporting requirements is to provide the Tax Office with important data for its administration of the superannuation guarantee. In his announcement the Minister for Revenue and Assistant Treasurer stated that 'the reporting system will capture information necessary to ensure that employees receive their superannuation guarantee entitlements while minimising disruption to employers and superannuation providers'.
18. The SGAA was subsequently amended by the *Tax Laws Amendment (2006 Measures No. 3) Act 2006*<sup>20</sup> (Act No 80 of 2006) to require superannuation providers to report details of superannuation contributions in the approved form for the 2005-06 financial year and later years. The amendments received Royal Assent on 30 June 2006 and apply retrospectively from 1 July 2005 in respect of contributions made or transferred on or after that date.
19. Under the revised arrangements, superannuation providers are required to report to the Tax Office by the lodgment due date for the year, the total of all contributions made by an employer for an employee to the fund or RSA during the year, as well as the total of all contributions made for the employee to the fund or RSA during the year. Superannuation providers are also required to report contributions made during the year that have been transferred out of the fund or RSA to the receiving superannuation provider within 30 days of the transfer taking place.

<sup>17</sup> The terms 'hinder' and 'obstruct' are explained in detail in Chapter 10 of the *ATO Prosecution Policy*.

<sup>18</sup> For financial years before 1 July 2005, subsection 13(2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* required superannuation providers to report contributions to the Tax Office on an annual basis.

<sup>19</sup> See the Minister for Revenue and Assistant Treasurer's Media Release No. 001, *Reporting of Employer Contributions by Superannuation Providers*.

<sup>20</sup> This amending act inserted sections 78 and 78A into the SGAA. The amending act also inserted paragraph 298-5(c) (second occurring) into Schedule 1 to the TAA, giving the Commissioner the power to remit, either fully or in part, the penalties imposed under sections 78 and 78A of the SGAA.

20. As the revised reporting arrangements were not announced until 2 February 2006, superannuation providers may not have the relevant information recorded on their systems for the period from 1 July 2005 to 2 February 2006.
21. Similarly, superannuation providers may not have reported contributions that have been transferred out of the fund or RSA to the receiving superannuation provider during the period from 1 July 2005 to 2 February 2006 as they were unaware that they would be required to do so at the time the transfer took place.
22. In acknowledging the difficulties that superannuation providers may have in satisfying their SG reporting requirements for the 2005-06 financial year, the Commissioner will generally exercise his discretion to remit the administrative penalty in full where the superannuation provider has made a genuine attempt to satisfy its SG reporting requirements for the year, or has been unable to report for part or all of the year as a result of not having the relevant information recorded on its systems.
23. The Commissioner will adopt a 'business as usual' approach to the administration of the SG reporting requirements for the 2006-07 financial year and future years. It is considered that by this time superannuation providers will have had sufficient opportunity to understand and comply with the SG reporting requirements.
24. While the Commissioner will continue to provide education and assistance to superannuation providers to help them satisfy their SG reporting requirements, the remission guidelines set out in this practice statement will no longer apply in respect of contributions made on or after 1 July 2006.

**Amendment history**

<b>Date of amendment</b>	<b>Part</b>	<b>Comment</b>
25 August 2010	Contact details	Updated.
2 September 2009	Contact details	Updated.
8 April 2008	Paragraph 7A	Inserted - sections 78 and 78A of the SGAA were repealed by the <i>Tax Laws Amendment (Simplified Superannuation) Act 2007</i> .
	Contact details	Updated.

Subject references	Superannuation Guarantee Reporting
Legislative references	Crimes Act 1914 4AA Crimes Act 1914 4B(3) Superannuation Contributions Tax (Assessment and Collection) Act 1997 13(2) Superannuation (Government Co-Contribution for Low Income Earners) Act 2003 56 SGAA 1992 6(2) SGAA 1992 77 SGAA 1992 78 SGAA 1992 78(1) SGAA 1992 78(2) SGAA 1992 78(3) SGAA 1992 78(3)(a) SGAA 1992 78(3)(b) SGAA 1992 78A SGAA 1992 78A(1) SGAA 1992 78A(2) SGAA 1992 78A(3) TAA 1953 Sch 1 298-5(c) (second occurring) TAA 1953 Sch 1 298-10 TAA 1953 Sch 1 298-20(1) TAA 1953 Sch 1 298-20(3) TAA 1953 Sch 1 388-50
Related public rulings	
Related practice statements	
Other references	The ATO Prosecution Policy, Chapter 10 Minister for Revenue and Assistant Treasurer's Media Release No. 001, Reporting of Employer Contributions by Superannuation Providers
Case references	
File references	06/16847
Date issued	11 October 2006
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Other Business Lines consulted	<b>Superannuation; Excise; GST; LB&amp;I; SB; OPS; TPALS; ARL; CS&amp;C</b>