

SCD 1999/5 - Superannuation contributions: rolled over employer eligible termination payment (ETP)

⚠ This cover sheet is provided for information only. It does not form part of *SCD 1999/5 - Superannuation contributions: rolled over employer eligible termination payment (ETP)*

⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *18 August 1999*

Superannuation Contributions Determination

Superannuation contributions: rolled over employer eligible termination payment (ETP)

Preamble

Superannuation Contributions Determinations (SCDs) do not have the force of law. Each decision made by the Australian Taxation Office is made on the merits of the individual case having regard to any relevant Rulings and Determinations.

1. Section 8 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (SCT(A&C) Act) explains what a member's surchargeable contributions are for a financial year. A member's surchargeable contributions include an employer ETP (sometimes known as a 'golden handshake'), rolled over on or after 1 July 1997 to a superannuation provider.
2. A member's surchargeable contributions also include employer ETP amounts above the tax free amount, paid as a result of a bona-fide redundancy or an approved early retirement scheme, when rolled over on or after 1 July 1997.
3. Transitional rules apply to determine the surchargeable contributions when an employer ETP is rolled over in the period after 20 August 1996 and before 20 August 2001. The rules ensure that, for the transitional period, only the post 20 August 1996 part of the employer ETP is treated as surchargeable.
4. The effect of the section is to bring the treatment of employer ETPs, rolled over to a superannuation provider during the transitional period, into line with those taken in cash under the provisions of the *Termination Payments Tax (Assessment and Collection) Act 1997* (TPT (A&C) Act).

Application

5. The Commissioner will administer the provisions of subparagraph 8(2)(c)(iii) and subsection 8(2A) of the SCT(A&C) Act in the following manner to ensure consistency in their application.

Transitional period (after 20 August 1996 and before 20 August 2001)

6. The transitional provision in subsection 8(2A) requires an apportionment of the rolled over employer ETP, accrued after 20 August 1996, over the total period of service to which the benefit relates. This is calculated using the formula:

$$\frac{\text{Post-20 August 1996 period}}{\text{Total period}} \times \text{Eligible termination payment}$$

where:

post-20 August 1996 period means the number of days in the period of the taxpayer's employment for which the eligible termination payment was made that occurred after 20 August 1996;

total period means the number of days in the period of the taxpayer's employment for which the eligible termination payment was made; and

eligible termination payment has the same meaning as in paragraph 27A(1)(a) of the *Income Tax Assessment Act 1936* (other than a CGT exempt component, a post 30 June 1994 invalidity component or a payment from an employee share acquisition scheme).

The period commencing on or after 20 August 2001

7. Subparagraph 8(2)(c)(iii) applies to amounts rolled over on or after 20 August 2001 and applies to specified rollover amounts accrued after 20 August 1996. In order to ensure consistency with the application of section 8, the following formula is to be used to calculate that part of the specified rollover amount to be treated as a surchargeable contribution for amounts rolled over on or after 20 August 2001:

$$\frac{\text{Post 20 August 1996 period}}{\text{Post 30 June 1983 period}} \times \text{Specified Rollover Amount}$$

where:

post 20 August 1996 period means the number of days in the period of the taxpayer's employment for which the eligible termination payment was made that occurred after 20 August 1996;

post 30 June 1983 period means the number of days in the period of the taxpayer's employment that occurred after 30 June 1983; and

the specified rollover amount is a specified rollover amount for the purposes of Divisions 8 or 8A of Part III, or for the purposes of Part IX, of the *Income Tax Assessment Act 1936* (that is, the untaxed element of a post 30 June 1983 component of an employer ETP that is rolled over).

Example 1

Transitional period (the period after 20 August 1996 and before 20 August 2001)

8. Tracey, who commenced employment with her previous employer on 1 July 1984, resigned from that employment on 20 August 1999. She was given an employer ETP of \$5,000, which was rolled over to a superannuation provider. The amount of the employer ETP to be treated as a surchargeable contribution is calculated in the following manner:

$$\frac{\text{No of days after 20 August 1996 to 20 August 1999}}{\text{No of days from 1 July 1984 to 20 August 1999}} \times \text{Employer ETP}$$

Number of days in the period 1 July 1984 to 20 August 1999 – 5,529

Number of days in the period after 20 August 1996 to 20 August 1999 – 1,095

The surchargeable contribution is:

$$\frac{1\,095}{5\,529} \times 50\,000 = \$9,902.$$

Example 2

Period on or after 20 August 2001

9. *Therese was employed prior to 1 July 1983 and received an employer ETP of \$50,000 when she left employment on 20 August 2004. The employer ETP included an untaxed element of the post 30 June 1983 component of \$40,000 (when rolled over, the specified rollover amount). Therese has rolled over the entire employer eligible termination payment to a superannuation provider. The amount to be treated as a surchargeable contribution is calculated in the following manner:*

$$\frac{\text{No of days after 20 August 1996 to 20 August 2004}}{\text{No of days from 1 July 1983 to 20 August 2004}} \times \text{Specified Rollover Amount}$$

Number of days after 20 August 1996 to 20 August 2004 – 2,922

Number of days from 1 July 1983 to 20 August 2004 – 7,722

The surchargeable contribution is:

$$\frac{2\,922}{7\,722} \times 40\,000 = \$15,136.$$

Commissioner of Taxation

18 August 1999

Previous draft:

Previously released as SCD 98/D1

Related Rulings/Determinations:

SCD 98/1; SCD 98/2

Subject references:

eligible termination payments; employer eligible termination payments; ETP rollover; golden handshakes; specified rollover amounts; superannuation; superannuation contributions; surchargeable contributions

SCD 1999/5

Legislative references:

SCT(A&C)A 8; SCT(A&C)A 8(2)(c)(iii); SCT(A&C)A 8(2A); ITAA 1936 27A(1)(a); ITAA 1936 Div 8, Pt III; ITAA 1936 Div 8A, Pt III; ITAA 1936 Pt IX

Case references:

ATO references:

NO NAT 98/3015-4

BO

FOI index detail: I 1020501

ISSN: 1329-2471