



SCD 1999/6 - Superannuation contributions: what administrative arrangements for further statements and objections will the Commissioner put in place following amendments to the surcharge legislation?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 17 November 1999



Superannuation Contributions Determination

Superannuation contributions: what administrative arrangements for further statements and objections will the Commissioner put in place following amendments to the surcharge legislation?

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. The *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999* (Act No 131 of 1999 – the amending Act) amends aspects of the principal Acts - the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (the SCT(A&C) Act) and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (the CP Act). The amendments to the SCT(A&C) Act apply from 5 June 1997 while the amendments to the CP Act are to apply from 7 December 1997.

2. Among other things, the amending provisions clarify what is being taxed for surcharge purposes and set out how the amount that is taxed is to be calculated. The surchargeable contributions of members of superannuation providers that are not defined benefit superannuation providers are set out in some detail in the legislation. The clarification brought about by the amending Act requires:

- (i) taxable contributions identified under particular subparagraphs of section 274 of the *Income Tax Assessment Act 1936* (the ITAA 1936);
- (ii) amounts allowed as a deduction under section 82AAT of the ITAA 1936;
- (iii) specified roll-over amounts (subject to specific subsections of the principal Acts); and
- (iv) allocated surplus amounts (allocated on or after 1 July 1997 - Superannuation Contributions Ruling SCR 1999/1 sets out the reporting requirements for surcharge purposes where amounts have been allocated to members from surplus);

paid for or by the member to, or otherwise credited or attributed to an account for the member by, a superannuation provider other than a defined benefit superannuation provider for the financial year to be reported in a statement to be given to the Commissioner.

3. The amending provisions also make it clear that the surchargeable contributions of a member of a defined benefit superannuation provider are the amounts that constitute the actuarial value of the benefits that accrued to, and the value of the administration expenses and risk benefits provided in respect of, the member for the financial year. Surchargeable contributions for members of defined benefit superannuation providers are to be calculated:

- (i) for the financial years ended 30 June 1997, 1998 and 1999 using the formula

$$\text{annual salary} \times \text{notional surchargeable contributions factor}$$

where the notional factor is calculated in accordance with the method set out in Superannuation Contributions Ruling SCR 97/1 or in accordance with a method approved by the Commissioner; and

- (ii) for the financial year ending 30 June 2000 and later financial years, in accordance with a method set out in the Regulations or a method approved by the Commissioner (it is proposed that the method for calculating surchargeable contributions for the financial year ended 30 June 2000 will be the same as for the earlier financial years).

4. Transitional provisions in the amending Act require superannuation providers, who have given the Commissioner a statement under section 13 of the SCT(A&C) Act and section 12 of the CP Act that does not comply with the requirements of those Acts as amended, to give a further statement to the Commissioner by a date set out by the Minister in the Gazette (it is proposed that the Gazette notice will require further statements to be submitted by 31 August 2000).

5. In addition, other transitional provisions enable superannuation providers that have either not objected, or objected, to superannuation surcharge assessments issued by the Commissioner to make a further objection within 60 days of the day in which the amending Act received Royal Assent. The amending Act received Royal Assent on 13 October 1999, which means those superannuation providers wishing to make a further objection must do so by 13 December 1999 if the further objection is to be considered as being lodged on time.

Further statements

Superannuation providers other than defined benefit superannuation providers

6. Superannuation providers that are not defined benefit superannuation providers are not required to submit further statements for the 1996-97 and 1997-98 financial years unless they have not reported surchargeable contributions in line with the requirements of the legislation.

Defined benefit superannuation providers

7. A number of defined benefit superannuation providers have reported surchargeable contributions that have been calculated using notional factors determined in accordance with a method the provider's actuary considered satisfied Australian actuarial practice. The Commissioner has previously expressed the view that if actuaries calculated notional factors using the method set out in SCR 97/1, they calculated those factors in accordance with Australian actuarial practice.

8. However, the Commissioner acknowledged it was open to actuaries to use any method that was consistent with Australian actuarial practice to calculate the factors. He agreed this may result in factors that differed from those that might arise had the factors been calculated using SCR 97/1, but this was to be expected when one relied on experts acting with integrity and exercising their skills in line with professional standards.

9. At the same time, the Commissioner also expressed the view that notional factors could be calculated for defined benefit superannuation providers on contributions holidays. He pointed out the reason for the amendment to the definition of 'notional surchargeable contribution factor' in the *Superannuation Contributions and Terminations Payments Taxes Legislation Amendment Act 1997* was set out in the explanatory memorandum in the following words:

"Subsection 8(3) determines the amount of surchargeable contributions for a member of a defined benefits fund based on a notional surchargeable contributions factor. The definition of 'notional surchargeable contributions factor' in section 43 of the Act is being amended to ensure that, if appropriate, a notional surchargeable contributions factor for a member for a particular year can be determined for an unfunded defined benefits scheme and for a funded defined benefits scheme that does not actually receive any contributions in that year because, for example, it is on a contributions holiday".

Actuary's certificate

10. The Commissioner does not see it as cost effective or efficient to now require defined benefit superannuation providers to submit further statements if the provider's actuary gives the provider an additional written certificate that states notional factors used to calculate surchargeable contributions for the financial years ended 30 June 1997 and 1998 (and for the 1998-99 financial year if surchargeable contributions to be reported/reported are calculated on the same basis) have been calculated:

- (i) in accordance with a method that was consistent with Australian actuarial practice (see paragraphs 7 and 8); and
- (ii) in line with professional standards; and
- (iii) not in conflict with the reason for the amendment to the definition of 'notional surchargeable contribution factor', introduced in the *Superannuation Contributions and Terminations Payments Taxes Legislation Amendment Act 1997* (see paragraph 9).

11. Clearly, there will be no need for an actuary to provide an additional written certificate if the original actuarial certificate dealing with notional surchargeable contributions factors indicates the notional factors were calculated in accordance with the guidelines set out in SCR 97/1. Further statements will not be required in these circumstances, nor will they be required if notional factors were calculated in accordance with a method approved by the Commissioner or the Australian Government Actuary (who approved a number of alternative methods on behalf of the Commissioner).

12. Those providers required to give further statements will also need to recalculate the surchargeable contributions of those members that have exited. The value of the recalculated contributions will need to be notified to either the Commissioner (when a member has left the superannuation system or for transfers for the 1997 and 1998 financial years) or to the receiving provider.

Commissioner's approval

13. Alternatively, a provider may seek approval of the method used to calculate notional factors from the Commissioner. The provider will be required to address the request to:

Surcharge Lodgment Systems Support, PO Box 2215, Bankstown NSW 1888

and:

- (i) explain why the method set out in SCR 97/1 is inappropriate; and
- (ii) set out the other method used; and
- (iii) explain why that other method is the most appropriate method to use for calculating notional factors for that provider; and
- (iv) give an indication of the implications of the differences arising as a result of using the other method to assist the Commissioner in his deliberations.

14. The Commissioner will deal with each individual request on its merits and will seek the views of the Australian Government Actuary when dealing with those requests.

Objections

15. The grounds for objections lodged against superannuation surcharge assessments issued to superannuation providers for the 1996-97 and 1997-98 financial years may have been superseded by the amendments to the principal Acts. However, as indicated above, transitional provisions in the amending Act give superannuation providers the opportunity of submitting a retrospective objection to those assessments.

16. The Commissioner is mindful of the fact superannuation providers and members who have lodged objections may need to consult with their advisers to decide whether they should lodge amended or further objections in light of the legislation as it now stands. Accordingly, he is prepared to accept amended or further objections as being lodged on time if they are received by him on or before 31 January 2000.

17. If providers or members decide not to lodge amended or further objections or decide not to proceed with the objections that have been lodged, the Commissioner asks that they notify him in writing by 31 January 2000. The Commissioner will accept the withdrawal of objections under the terms of this determination on a 'no prejudice' basis for a period of time (that is, providers or members may reinstate their objections if they do so by 31 December 2000). Advice of withdrawal of objections should also be addressed to:

Surcharge Lodgment Systems Support, PO Box 2215, Bankstown NSW 1888.

18. If providers or members do not lodge amended or further objections or advise of the withdrawal of objections by this date, the Commissioner will deal with the objections lodged on the basis of the grounds stated (given the grounds for objection against 1997 and 1998 assessments may have been superseded by the changes in the amending Act, it is likely the objections will be disallowed).

Payment

19. Those providers who decide not to proceed with their objections should also pay any amount outstanding when they notify the Commissioner of their decision.

Commissioner of Taxation17 November 1999

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

SCR 97/1; SCR 1999/1

Subject references:

superannuation contributions tax (surcharge); submitting further reports and objections

*Legislative references:*SC&TPTLAA1999 sections 43 and 44

ATO references:

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