

SGD 2005/2A1 - Addendum - 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?

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Addendum

Superannuation Guarantee Determination

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?

This Addendum amends Superannuation Guarantee Determination SGD 2005/2 to ensure that SGD 2005/2 does not apply to a contribution made to an approved clearing house. Amendments made to the *Superannuation Guarantee (Administration) Act 1992* (SGAA 1992) by *Tax Laws Amendment (2010 Measures No. 1) Act 2010* mean that the law applies differently to contributions made to an approved clearing house. An approved clearing house is a body specified under regulation 7AE of the Superannuation Guarantee (Administration) Regulations 1993 for the purposes of subsection 79A(3) of the SGAA 1992.

The Addendum also replaces a reference to a withdrawn Determination with a reference to a Ruling.

SGD 2005/2 is amended as follows:

1. Title

After 'clearing house'; insert: '(other than an approved clearing house)'.

2. Paragraph 1

Omit the paragraph; substitute:

1. No. A contribution for the benefit of an employee to a superannuation fund or retirement savings account (RSA) that is made through the use of a clearing house, other than an approved clearing house,¹ is made when the contribution is received by the trustee of the complying superannuation fund or the RSA. A failure by the clearing house to forward the contributions to the fund² by the required date for the quarter under the *Superannuation Guarantee (Administration) Act 1992* (SGAA 1992) will result in a failure by the employer to make that contribution by the required date.

¹ See paragraph 1A of this Determination.

² Any reference to fund in this Determination is a reference to a complying superannuation fund or RSA.

SGD 2005/2

1A. This Determination does **not** apply to contributions made to an 'approved clearing house'. Section 23B of the SGAA 1992 applies to such contributions made on or after 1 July 2010. A different outcome to that described in this Determination arises if the requirements of section 23B of the SGAA 1992 are met. References to 'clearing house' in this Determination do not therefore include 'an approved clearing house'. Under new subsection 79A(3) of the SGAA 1992 an 'approved clearing house' is a body specified in the regulations. Regulation 7AE of the Superannuation Guarantee (Administration) Regulations 1993 specifies Medicare Australia for the purposes of subsection 79A(3) of the SGAA 1992.

3. Paragraph 11

Omit 'Superannuation Guarantee Determination SGD 2003/7'; substitute 'Taxation Ruling TR 2010/1'.

4. Related Rulings/Determinations

Omit 'SGD 2003/7'; substitute: 'TR 2010/1'.

5. Subject References

Insert:

- approved clearing house

6. Legislative References

Insert:

- SGAA 1992 23B
- SGAA 1992 79A(3)
- SGA Regulations 1993 7AE

This Addendum applies on and from 1 July 2010.

Commissioner of Taxation

29 September 2010

ATO references

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