

SGD 93/4 - Are superannuation contributions which result from a salary sacrifice arrangement made by the employer or are they made by the employee?

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *11 February 1993*

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

Superannuation Guarantee Determination

Are superannuation contributions which result from a salary sacrifice arrangement made by the employer or are they made by the employee?

1. A salary sacrifice arrangement is one where an employee forgoes part of the salary he or she would otherwise receive, in return for other benefits (e.g., superannuation benefits).

Example A: Ann's remuneration is \$31,000. Under a salary sacrifice arrangement, Ann agrees to accept \$30,000 in wages and \$1,000 in superannuation contributions.

2. The superannuation contribution is made **by the employer** if:

- the reduced salary is the amount which the employee properly would include as assessable income for income tax purposes, and
- the reduced salary is reflected in the calculation of other amounts which refer to an employee's salary in its calculation (e.g., reasonable benefit limits).

Example B: Assume the facts in example A. If Ann's assessable income is the reduced salary component of \$30,000, the \$1,000 superannuation contribution is made by Ann's employer and not Ann. Ann's employer gets a \$31,000 tax deduction, consisting of \$30,000 wages and \$1,000 superannuation contributions.

3. The superannuation contribution is made **by the employee** if the arrangement is no more than a redirection of the employee's salary. In some cases, employers simply withhold an amount from an employee's salary to pay into a superannuation fund on behalf of the employee. The amount withheld continues to be included in the employee's assessable income. Therefore, the contribution is made by the employee, not the employer, and does not count towards the employer's obligations under the Superannuation Guarantee legislation.

Example C: Ann's employer withholds an amount of \$1,000 from Ann's salary and pays it into a superannuation fund on Ann's behalf. Ann is still required to pay tax on an assessable income of \$31,000. The contribution is made by Ann and not her employer.

Commissioner of Taxation

11/2/93

FOI INDEX DETAIL: Reference No. I 1214065

Previously issued as Draft SGD92/D1

Related Determinations: TD92/D143 and TD92/D155

Subject Ref: salary sacrifice arrangement, superannuation contributions, assessable income

ATO Ref: 92/7711-1

ISSN 1038 - 7455