



TR 2005/24 - Income tax: deductibility of personal superannuation contributions

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 This document has changed over time. This is a consolidated version of the ruling which was published on *21 December 2005*



Taxation Ruling

Income tax: deductibility of personal superannuation contributions

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Preamble

The number, subject heading, **What this Ruling is about** (including **Class of person/arrangement** section), **Date of effect**, and **Ruling** parts of this document are a 'public ruling' for the purposes of **Part IVAAA of the Taxation Administration Act 1953** and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to a person who makes personal contributions to a complying superannuation fund or a Retirement Savings Account (RSA). It considers the circumstances in which those personal superannuation contributions qualify for an income tax deduction under Subdivision AB of Division 3 of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936).
2. The Ruling provides guidelines for determining when a person is an 'eligible person' in terms of subsection 82AAS(2) of the ITAA 1936 and explains how the eligible person test is modified under subsection 82AAS(3) of the ITAA 1936.
3. The Ruling also outlines the notice requirements that need to be satisfied in order to obtain an income tax deduction for personal contributions to a superannuation fund or RSA and outlines the superannuation deduction limits.
4. Unless otherwise stated, all legislative references are to the ITAA 1936.

Date of effect

5. This Ruling applies to years of income commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Previous Rulings

6. This Ruling replaces Taxation Ruling TR 96/25 which was withdrawn on and from the issue date of the draft version of this Ruling on 25 May 2005. To the extent that our views in those Rulings still apply, they have been incorporated in this Ruling.

Ruling

Deduction

7. A taxpayer is entitled to a deduction for personal superannuation contributions¹ under section 82AAT if the following conditions are met:

- (a) the taxpayer is an 'eligible person' in relation to the year of income;
- (b) the taxpayer made the contributions in order to obtain superannuation benefits;
- (c) the fund is a complying superannuation fund; and
- (d) the taxpayer has given notice under subsection 82AAT(1A) in respect of the contribution and the trustee of the fund has acknowledged the notice under that subsection.

8. However, a taxpayer is not entitled to an income tax deduction for personal superannuation contributions where the taxpayer:

- is aged 70 and over and the contributions were not paid on or before the day that is 28 days after the end of the month in which the taxpayer turned 70 years of age (subsection 26-80(3) of the *Income Tax Assessment Act 1997* (ITAA 1997));
- is under the age of 18 at the end of the income year and has not derived employment or business income (subsection 26-80(3) of the ITAA 1997); or
- is entitled to a Government co-contribution in respect of the contribution made (subsection 26-80(3) of the ITAA 1997).

¹ For guidance on the circumstances where a trustee of a regulated superannuation fund may accept contributions refer to the *Superannuation Industry (Supervision) Act 1993* and Superannuation Industry (Supervision) Regulations 1994. Also refer to the Australian Prudential Regulation Authority Superannuation Circular No. 1.A.1, 'Contribution and benefit accrual standards for regulated superannuation funds'.

Eligible person test

9. Under subsection 82AAS(2), a taxpayer is an 'eligible person' in respect of a year of income unless it was reasonable to expect that superannuation benefits would be provided for the taxpayer in the event of his or her retirement or to dependants in the event of his or her death (paragraph 82AAS(2)(a)). In addition, paragraph 82AAS(2)(b) explains that, to the extent to which those benefits would be attributable to the year of income, the benefits would be wholly or partly attributable to contributions made, or required to be made in relation to the year of income:

- to a superannuation fund of the taxpayer; and
- by someone other than the taxpayer; and
- in connection with the eligible employment of the taxpayer in the year of income; or

the benefits would, in whole or in part, be paid in relation to the year of income:

- out of money (other than contributions made to a superannuation fund) of someone other than the taxpayer; and
- in connection with the eligible employment of the taxpayer in the year of income.

10. A taxpayer will not be an 'eligible person' if superannuation contributions were made or were required to be made in respect of the eligible employment² unless subsection 82AAS(3) applies (refer to examples 2, 3, 5, 6 and 7). It contains a threshold test known as the ten percent rule, which allows a taxpayer to receive income from eligible employment, be entitled to employer superannuation support, and still be determined an 'eligible person'.

Reasonable to expect that superannuation benefits would be provided

11. Ordinarily, if a taxpayer has ceased employment with a former employer or is in receipt of a pension from his or her former employer's superannuation fund, there will be no superannuation contributions made or required to be made in relation to the year of income by that employer (refer to paragraphs 64 and 65).

12. However, if the employer has only temporarily ceased contributions, for example, because adequate provision has been made in previous years known as a 'contribution holiday' or, the taxpayer has taken an extended period of leave without pay and receives employer superannuation support in respect of that period, then there will be a reasonable likelihood that the employer will make future superannuation contributions for the benefit of the taxpayer.

² Refer to paragraph 44.

13. Ordinarily, a taxpayer will not be an 'eligible person' because it is reasonable to expect that superannuation benefits would be provided for the taxpayer by another person in respect of a year of income if:

- the taxpayer's employer actually makes contributions to a superannuation fund for the benefit of the taxpayer in respect of that year of income;
- another person has an obligation to make superannuation contributions on behalf of the taxpayer in connection with eligible employment in respect of that year of income; or
- another person makes deposits for the benefit of the taxpayer into the Superannuation Holding Accounts Special Account (subsection 82AAS(8)) before 1 July 2006 in respect of the year of income.

14. A person will have an obligation to make contributions to a superannuation fund for the benefit of a taxpayer if he or she is required to:

- make contributions to a superannuation fund for the benefit of the taxpayer under any occupational superannuation arrangement, an award, or under the terms of a trust deed; or
- make contributions to a superannuation fund for the benefit of the taxpayer under the *Superannuation Guarantee (Administration) Act 1992* (SGAA 1992) or pay the Superannuation Guarantee Charge (SGC) in respect of the taxpayer (subsections 82AAS(4), (5), (6) and (10)).

15. In broad terms, the provisions of subsections 82AAS(4), (5), (6) and (10) operate to require amounts paid in accordance with the provisions of sections 65, 65A, 66, and 67 of the SGAA 1992 to constitute superannuation benefits for the purposes of subsection 82AAS(2).

16. There are only very limited circumstances under sections 27 and 28 of the SGAA 1992 where an employer will not be under an obligation to provide superannuation support for the benefit of an employee. Examples include employees who are:

- 70 years of age or older;
- paid less than \$450 in a month; or
- working part-time and are under 18 years of age.

17. In addition, under subsection 19(4) of the SGAA 1992, a person is able to elect not to receive superannuation guarantee contributions from their employer where the person has reached the pension reasonable benefit limit. In this situation, the person may not receive any employer superannuation (excluding obligations under an award or industrial agreement or Australian Workplace Agreement) from eligible employment. Even though this means that the person could be viewed as an 'eligible person', they are specifically precluded from deducting personal contributions through the operation of subsection 82AAT(1F). That subsection provides that:

If a person has given his or her employer statements under subsection 19(4) of the *Superannuation Guarantee (Administration) Act 1992*, the person is not entitled to a deduction under this section, in his or her assessment for the year of income, in respect of any contribution made to a complying superannuation fund, or to an RSA, during:

- (a) the quarter (within the meaning of that Act) in which the statements are given; or
- (b) any later quarter.

18. Further information about 'eligible person' is contained in the Explanation section at paragraphs 29 to 36.

The ten percent rule

19. The reference to superannuation benefits in subsection 82AAS(2) does not include benefits provided for the taxpayer in respect of eligible employment if the taxpayer's assessable income, exempt income and reportable fringe benefits total from that particular eligible employment is less than ten percent of his or her total assessable income and reportable fringe benefits total for the year (subsection 82AAS(3)) (refer to examples 1, 4, 8, 9 and 10). This is known as the ten percent rule.

20. When applying the ten percent rule, the term 'particular eligible employment' in subsection 82AAS(3), includes multiple periods of employment by virtue of paragraph 23(b) of the *Acts Interpretation Act 1901*. That paragraph provides that words in the singular include the plural and vice versa, unless the contrary intention appears. The Commissioner considers that a contrary intention does not appear here.

21. On this basis, income from the same or different employers for the year of income is aggregated. However, if there is income from different employers and an employer is not required to or does not provide superannuation support in the income year, income from that employer should not be aggregated with other employment income when making the ten percent calculation (refer to paragraphs 76 to 79).

22. When applying the ten percent rule, assessable income, exempt income and reportable fringe benefits are to be given their statutory meaning. For example, assessable income attributable to particular eligible employment could be salary or wages or the assessable amount of Eligible Termination Payments (ETPs) from the employer. Payments from other sources such as ETPs from superannuation funds (including employer sponsored funds) or approved deposit funds are not included, as these amounts are not attributable to eligible employment.

23. For further information on the ten percent rule and the phrase 'particular eligible employment', refer to paragraphs 37 to 52.

Notice requirements

24. If a taxpayer is an 'eligible person', he or she must give a written notice to the trustee of each fund to which he or she has made a contribution and receive an acknowledgment of the notice from the trustee in order to obtain a deduction for personal superannuation contributions. The acknowledgment must be given by the trustee to the person without delay (subsection 82AAT(1A)) and before the Commissioner makes an assessment of the person's income for the relevant year (subsection 82AAT(1E)). However, if the person later receives the acknowledgement, the Commissioner may amend the assessment to allow the deduction.

25. The specific information that must be provided by the person for the purposes of subsection 82AAT(1D) concerning the form of the notice is set out in Taxation Determination TD 93/224.

Deductible amount and limits

26. If a taxpayer meets the requirements of subsection 82AAT(1) they are entitled to an income tax deduction which must not exceed the lesser of:

- the sum of the first \$5,000 of the personal superannuation contributions made and 75% of the contributions over \$5,000 (paragraph 82AAT(2)(a)); or
- the taxpayer's aged-based deduction limit (paragraph 82AAT(2)(b)).

27. The deduction limit is based on the person's age at the time the last contribution for the income year was made (subsection 82AAT(2A)). These amounts are indexed each year (subsection 82AAT(2B)).

28. In addition, it is important to note that even though a deduction may be allowed under section 82AAT it cannot add to or create a loss that can be carried over to another income year: section 26-55 of the ITAA 1997.

Explanation

'Eligible person'

29. A person is an eligible person in relation to a year of income unless:

- it was reasonable to expect that superannuation benefits would be provided for the relevant person or for dependants of the relevant person; and
- those benefits would be attributable to the year of income:
 - (i) from contributions made, or required to be made:
 - (A) to a superannuation fund of the relevant person;
 - (B) by someone other than the relevant person; and
 - (C) in connection with the eligible employment of the relevant person in the year of income; or
 - (ii) the benefits would, in whole or in part, be paid in relation to the year of income:
 - (A) out of money (other than contributions made to a superannuation fund) of someone other than the relevant person; and
 - (B) in connection with the eligible employment of the person in the year of income.

30. In broad terms, this means that if the person does not receive or is not entitled to receive any employer superannuation support for the year of income they will be an 'eligible person'. An exception applies if the person does or is entitled to receive superannuation support and satisfies the ten percent rule.

31. Further information about the exception is contained at paragraphs 37 to 45.

Reasonable to expect

32. The meaning of the term 'reasonable to expect' in subsection 82AAS(2) has been considered in a number of cases. Two of these cases; *FC of T v. Arklay* 89 ATC 4563; (1989) 20 ATR 276; 85 ALR 368; (1989) 22 FCR 298 (*Arklay's case*) and *FC of T v. McCabe* 90 ATC 4968; (1990) 21 ATR 992; (1990) 26 FCR 431 (*McCabe's case*), were decided before the introduction of the SGAA 1992.

33. Although it is accepted that *Arklay's* and *McCabe's* cases were correctly decided on their facts, it is unlikely that factual situations like those in *Arklay's case* and *McCabe's case* will arise in the future because the SGAA 1992 gives an employee a reasonable expectation that superannuation benefits will be provided by another person.

34. The term 'reasonable to expect' was also examined in the case of *Findlay v. FC of T* (1998) 98 ATC 4623; 39 ATR 266 (*Findlay's case*). In *Findlay's case* the applicant was an employee of a company. The company had an obligation to make superannuation contributions for him as he was an employee for purposes of the SGAA 1992. An administrator was appointed to the company and in the 1994 year the applicant made personal contributions to a superannuation fund and claimed a deduction for those contributions. Subsequently, the administrator of the company lodged a superannuation guarantee statement and paid the SGC in respect of the applicant. The applicant was then informed by the Commissioner that he was entitled to a superannuation guarantee credit of \$981 which could only be paid into a nominated superannuation fund account. The applicant declined to nominate a superannuation fund account into which the credit could be paid. Sundberg J concluded that both paragraphs 82AAS(2)(a) and (b) should be read together. The applicant was an 'eligible person' because subparagraph 82AAS(2)(b)(i) was not satisfied. His Honour said:

no one other than the applicant had contributed to a superannuation fund in relation to him... While the 'benefits' in para (b) are the future benefits contemplated by para (a), the 'contributions' to which paragraph(b)(i) refers are in my view contributions that have in fact been made... Para (b) assumes that these benefits are likely to be provided, and is concerned with attributing benefits to contributions made in the year of income and identifying the contributor.

35. Subsection 82AAS(10) provides that a credit to a superannuation guarantee account is taken to be a contribution by another person for the purposes of subsection 82AAS(2). The enactment of this provision in 1995 means that, although the decision in *Findlay's case* remains relevant in interpreting section 82AAS, the issue in this case will not arise in future. An employee's failure to nominate a superannuation fund no longer prevents a superannuation guarantee credit being taken to be a contribution by another person under subsection 82AAS(2).

36. Also, in *Findlay's* case, contributions had to be made to the superannuation fund if the taxpayer was to be denied 'eligible person' status. Amendments in 2003 to the definition of 'eligible person' in subparagraph 82AAS(2)(b)(i) means that the provision is now concerned with whether the person had received or should have received employer superannuation contributions in connection with particular eligible employment. Hence, it is necessary to determine if there is an employer obligation or requirement to make superannuation contributions on behalf of the taxpayer, regardless of whether those superannuation contributions are made to the superannuation fund or RSA.

The ten percent rule

37. Subsection 82AAS(3) provides that, where a taxpayer is engaged in eligible employment, the reference to superannuation benefits in subsection 82AAS(2) does not include benefits provided for the taxpayer in respect of that eligible employment if the taxpayer's income (assessable and exempt) and the reportable fringe benefits total from that eligible employment is less than ten percent of his or her total assessable income and reportable fringe benefits total for the income year. This is referred to as the ten percent rule.

38. The application of the ten percent rule has been considered in cases before the Administrative Appeals Tribunal (AAT). In *Re Edmonds – Wilson v. Commissioner of Taxation (Cth)* (1998) 98 ATC 2276; (1998) 40 ATR 1071 (*Re Edmonds – Wilson* case), the employer of a casual employee provided superannuation support for four months of a particular year of income. The salary of the casual employee in the remaining months was less than \$450 and as such superannuation support was not required. If the salary in respect of those months where superannuation support was provided was taken into account, the casual employee, on the basis of the ten percent rule would not be excluded from being an 'eligible person'. The AAT decided that, in applying the ten percent rule, all the casual employee's employment income must be brought into account in the arithmetic testing and that this was the only interpretation available under the legislation. As such, the casual employee was not an 'eligible person'.

39. In *Norris v. FC of T* (2002) ATC 2091; 50 ATR 1250 (*Norris's* case), the taxpayer derived income of \$1,686 from two days work and several days paid annual leave. He argued that he was an 'eligible person' because that amount was less than ten percent of his total assessable income. The Commissioner counted the amounts paid to the taxpayer in respect of long service leave and annual leave even though superannuation support was not provided in respect of those amounts. The Tribunal decided that as the meaning of the term assessable income was not defined in subsection 82AAS(3) it should be construed according to its legislative purpose as set out in the Explanatory Memorandum to the *Taxation Laws Amendment (Superannuation) Bill 1992*. As such, it was preferable to adopt a

narrower interpretation of assessable income so that it only included amounts attracting employer superannuation support.

40. With respect to the Tribunal the Commissioner does not agree that the ordinary meaning conveyed by the text of subsection 82AAS(3), taking into account its context in the Act and the purpose or object underlying the Act, leads to a result that is manifestly absurd or unreasonable. The extract from the Explanatory Memorandum cited in *Norris's* case as giving support for the proposition that income from 'eligible employment' should be read narrowly is set out below:

to expand the concept of a substantially self-employed person so that people who are substantially self-employed do not lose access to tax deductions for their personal superannuation contributions because they perform small amounts of paid employment through which they receive employment superannuation support.

41. The interpretation adopted by the Commissioner concerning the parameters of the term 'assessable income from 'eligible employment' does not prevent the objectives set out in the extract from the Explanatory Memorandum from being achieved. The term 'assessable income' is used many times throughout the legislation. For that matter both 'exempt income' and 'reportable fringe benefits' are defined and given their commonly understood meaning throughout the ITAA 1936, and if the statutory meaning of these terms was intended to be modified it is considered that the wording of the provisions would have done so. The Commissioner considers that the wording of the legislation is clear, and the terms used in this provision according to the statute are unambiguous. Therefore, to the extent that assessable income is attributable to 'eligible employment', it should be taken into account in the arithmetic calculation set out in subsection 82AAS(3). Therefore, respectfully in our view it is difficult to reconcile the conclusions in *Norris's* case as the provision does not state that only assessable income which receives employer support should be included under the ten percent rule.

42. Hence, it would be difficult to conclude that a differentiation should be made between the diverse forms of income that receive and do not receive employer support. Consequently, only income from particular eligible employment where the employer is obligated or, has provided, employer superannuation support within the year of income is included for the purposes of applying the ten percent rule (refer to paragraph 19 to 23).

43. In interpreting the parameters of income from eligible employment for the purposes of the ten percent rule, the Commissioner considers that the decision in the *Re Edmonds – Wilson* case provides the most appropriate interpretation of the wording of the provisions.

44. 'Eligible employment' is defined in subsection 82AAS(1) and means, in relation to a person:

- (a) the holding of any office or appointment;
- (b) the performing of any functions or duties;
- (c) the engaging in of any work; or
- (d) the doing of any acts or things,

that results in the person being treated as an employee for the purposes of the SGAA 1992 (assuming that subsection 12(11) of that Act had not been enacted).

45. The effect of the ten percent rule is that any superannuation contribution which is made, or required to be made, for the benefit of a person and relates to his or her particular eligible employment will not preclude the person from being an 'eligible person', if the income derived from that particular eligible employment does not exceed ten percent of the total of the person's assessable income and the reportable fringe benefits total (if any).

Alternative views

46. The Commissioner recognises that there are alternative views to the application of the ten percent rule. It is argued that, if an ETP is paid to a person who is engaged in eligible employment, only that part of the assessable component of the ETP which is attributable to the year of income in which it is received should be used to determine whether the ten percent rule is exceeded.

47. However, sub-subparagraph 82AAS(3)(b)(i)(A) provides that a person's assessable income from eligible employment engaged in during that year of income is the relevant amount to be considered. It is, therefore, the Commissioner's view that there is no legislative basis for apportioning the assessable component of an ETP.

48. Consequently, the amount of the ETP included in the person's assessable income in the year of receipt must be used for the purposes of the ten percent rule.

49. The other alternative view which has been suggested is that a taxpayer's eligible employment income from different employers in the income year should not be aggregated, but treated separately when applying the ten percent rule.

50. Specifically, this alternative view is based on the use of the words 'particular eligible employment' and 'that eligible employment' in paragraph 82AAS(3)(a) and sub-subparagraph 82AAS(3)(b)(i)(A). It has been argued that the use of these terms indicates that income received by a person from different employers during the year of income can be treated separately when applying the ten percent rule. That is, the rule should be applied to income (including exempt income and reportable fringe benefits) from each eligible employment separately.

51. The Commissioner does not agree with this interpretation of subsection 82AAS(3). The Commissioner believes that the provision should be read in accordance with the policy intent. The policy intent is that all income from employment that attracts employer superannuation support should be aggregated.

52. Consequently, if an individual works for an employer that has no legal obligation to make superannuation contributions (for example, the employee is paid less than \$450 a month) and has not provided employer superannuation support, income from this employment is not be taken into account and not aggregated for the purposes of applying the ten percent rule.

Examples

53. The following examples demonstrate the operation of sections 82AAS and 82AAT.

Example 1 (ten percent rule)

54. Louise, a self-employed person, works part-time and her employer makes contributions to a superannuation fund for her. The assessable income from her part-time employment is less than ten percent of her assessable income earned during the year of income. Louise is eligible person under subsection 82AAS(3) and can claim a deduction under section 82AAT for her personal superannuation contributions.

Example 2 (eligible person)

55. Tania is accruing benefits in a superannuation fund as a result of contributions made by a former employer that related to a previous year of income. Tania is now self-employed and is entitled to claim any personal superannuation contributions as a deduction under subsection 82AAS(2) in the current year of income.

Example 3 (eligible person)

56. Julia, a self-employed person, is paid an additional \$400 per month from casual employment. As Julia is paid less than \$450 per month from her casual employment, that employer is not required to provide superannuation support under the SGAA 1992. Therefore, Julia is an eligible person under subsection 82AAS(2) and can claim a deduction under section 82AAT for personal superannuation contributions.

57. However, Julia would be precluded from claiming a tax deduction under section 82AAT if her employer did provide employer support. This would apply notwithstanding that the employer is not bound to contribute for purposes of the SGAA 1992. However, Julia may be entitled to a deduction for personal superannuation contributions under section 82AAT if she qualified under the ten percent rule.

Example 4 (ten percent rule)

58. Mike, who is now a self-employed person, worked full-time for an employer during the first three months of the income year. Mike's employer provided superannuation support during the period of his employment. On termination, Mike received an ETP from his employer and a payment for unused annual leave. The sum of these payments and Mike's wages was \$10,000. Business income for the year amounted to \$30,000.

59. Mike is not an 'eligible person' under subsection 82AAS(2) as superannuation benefits were provided. Also, Mike's income from eligible employment is greater than ten percent of his assessable income (subsection 82AAS(3)). Mike is not entitled to a deduction for any personal superannuation contributions made in respect of that year.

Example 5 (eligible person)

60. Alcoe Pty Ltd did not provide superannuation support for the benefit of their employees during the year of income. John, an employee of Alcoe Pty Ltd, was making personal superannuation contributions into a complying superannuation fund.

61. A review was made by the Tax Office to determine the company's liability to pay the SGC. During this review, it was discovered that the company had been wound up. Also, there were no funds to pay the SGC. Notwithstanding this, it is reasonable to expect that superannuation benefits would be provided (paragraph 82AAS(2)(a)) and further, those benefits would be attributable to that year of income because they would be required to be made in relation to the year of income (paragraph 82AAS(2)(b)). Accordingly, John is not an eligible person under subsection 82AAS(2) and not entitled to a deduction for any personal superannuation contributions made to a complying superannuation fund or RSA.

Example 6 (eligible person)

62. Matt, a self-employed plumber, received an ETP to the value of \$50,000 from his former employer on 1 July 2004. Matt's other income for the year ending 30 June 2005 consisted of \$5,000 in interest and \$10,000 from his business. No employer superannuation contributions were made on Matt's behalf during the year ending 30 June 2005.

63. Under subsection 82AAS(2), the ETP received does not constitute the provision of superannuation benefits. Therefore, Matt is considered to be an 'eligible person' and may be entitled to a deduction for any personal superannuation contributions that he has made to a complying superannuation fund or RSA.

Example 7 (eligible person)

64. John is aged 59 and his only income for the year ended 30 June 2005 is an employer sponsored superannuation pension and investment income. For the year ended 30 June 2005, John made contributions to a complying superannuation fund.

65. John is considered to be an 'eligible person' under subsection 82AAS(2) as no superannuation benefits had been provided in respect of the whole or part of that year of income ended 30 June 2005. Therefore, John is entitled to a deduction for his personal superannuation contributions.

Example 8 (ten percent rule)

66. Bronte took leave without pay to work overseas. Upon her return to Australia she was employed with the same employer for one week before resigning. As Bronte was paid more than \$450 for one week's employment her employer is required to make superannuation contributions on her behalf or be subject to the SGC.

67. Upon resignation from her employer, Bronte received payment of her annual and long service leave which did not attract any employer superannuation support. During the same year of income, she commenced her business and made personal contributions to her complying superannuation fund.

68. For Bronte to be able to claim a deduction for personal contributions, she needs to pass the ten percent rule. In this case her assessable income attributable to eligible employment includes the amounts paid by her employer for annual and long service leave.

Example 9 (ten percent rule)

69. Kylie, a self-employed dressmaker, works on a casual basis as a waitress to supplement her income. She has two 'regular' casual employers, A & B, that is, two separate employment relationships. Depending on the number of hours worked, she is paid from A between \$500-\$550 per month and from B between \$250-\$300.

70. As she is paid less than \$450 per month from B, her employer is not required to provide superannuation support under the SGAA 1992. It is assumed that there is no superannuation industrial award for that industry. However, A will be required to provide superannuation support at the going rate on the basis of the income paid to Kylie.

71. For the purposes of determining whether Kylie satisfied the ten percent rule, the Commissioner takes the view that only the income from A which is subject to superannuation support, will be taken into account. The total income paid from B will not be aggregated with the income paid from A in calculating the relevant percentage.

72. The situation would not be different if in some months of the year Kylie had been paid less than \$450 from A. Her total income from A would still be taken into account in determining whether she satisfied the ten per cent rule because she has received some superannuation benefits from A in the other months.

Example 10 (ten percent rule)

73. Sandy, a casual administrative assistant works for two employers during a year of income, as well as being self-employed. Her income details are as follows:

Employer 1 She is paid \$440 per month for the months July to Oct and then is paid \$500 per month for the months November till June (total income of \$5,760).

Employer 2 She is paid \$750 per month (total income of \$9,000 in the income year).

Other income She earns \$25,000 from her business.

74. Employers 1 and 2 both provide superannuation support for Sandy for the months in which she is paid at least \$450.

75. For the purposes of determining whether Sandy satisfied the ten percent rule, income from both employers are aggregated. Sandy's assessable income attributable to eligible employment income for the year of income is \$14,760. Consequently, Sandy is not an eligible person for the purposes of subsection 82AAS(2) as she does not satisfy the ten percent rule (subsection 82AAS(3)).

Example 11 (ten percent rule)

76. Jayne was permanently employed as a school teacher and took maternity leave without pay for 12 months from 1 July 2002 to 30 June 2003. During this period superannuation contributions were required to be made by her employer.

77. After the 12 months maternity leave Jayne went on leave without pay, no superannuation contributions were made by her employer in respect of this period. After 6 months, Jayne resigned and received a retirement benefit including an amount of unused holiday pay.

78. During the year ended 30 June 2004 Jayne made a \$6,000 contribution to her own superannuation fund and later in the same income year, she obtained employment as a casual employee with her old employer. The employer made superannuation contributions for Jayne in relation to her casual employment.

79. The employer treated the two periods of employment as separate and as no employer superannuation support was provided for the first period of employment when she was on leave without pay, the income from that period of employment should not be aggregated with the income from casual employment when making the ten percent calculation under section 82AAS(3).

Detailed contents list

80. Below is a detailed contents list for this Taxation Ruling:

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