

PAY-ROLL TAX ON SUPERANNUATION CONTRIBUTIONS MADE BY AN EMPLOYER

Pay-roll Tax Act

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Purpose of this circular

1. This circular is to inform employers on the application of the *Pay-roll Tax Act* ("the Act") to certain superannuation arrangements between employers and their employees. The circular covers contributions made both before and from 1 July 1999 (when legislative changes took effect).

Introduction

2. Generally, all wages paid or payable by an employer are subject to pay-roll tax in accordance with section 6 of the Act.
3. On 1 July 1999, the *Pay-roll Tax Amendment Act* changed the pay-roll tax treatment for superannuation contributions as part of a suite of pay-roll tax reform measures. The other major measures were the inclusion of fringe benefits in the base, the adoption of a single tax rate of 6.75% and a fixed (non-reducing) general exemption of \$600,000. More details of the measures can be found in Revenue Circular PRT 003.
4. Prior to 1 July 1999, the practice of this Office was to treat employer contributions to a superannuation fund as subject to pay-roll tax only to the extent that the contribution exceeded the amount required to be made pursuant to the superannuation guarantee scheme or an industrial award.
5. However, from 1 July 1999, the full amount of superannuation contributions made by employers on behalf of their employees is subject to pay-roll tax.
6. Revenue Circular RA001 is incorporated into and is to be read as one with this circular.

Employer Superannuation Contributions after 1 July 1999

7. From 1 July 1999, the definition of wages was broadened to include all superannuation contributions.
8. Superannuation contributions paid in cash or in kind in respect of services performed or rendered on or after 1 July 1999, can be any of the following:
 - (a) where an employer has paid or is required to pay to a regulated superannuation fund, the amounts paid or payable, including any administration charges paid in respect of the superannuation fund;
 - (b) where an employer has incurred a superannuation guarantee charge shortfall, the amount of the shortfall and any administration charges excluding penalties;
 - (c) where an employer that is a participant, at some time, in:
 - (i) an unregulated superannuation scheme; or
 - (ii) a regulated superannuation scheme that is unfunded; andwhich provides a defined benefit, an actuarially determined amount shall be the superannuation contribution; and

- (d) where an employer contributes to an unregulated superannuation scheme that does not provide a defined benefit, the amount credited in respect of the contribution, whether or not an amount is physically paid, is the superannuation contribution.

Superannuation Funds

9. A superannuation fund is a fund that is carried on for the purposes of a superannuation scheme and includes:
- (a) a provident or retirement fund or scheme;
 - (b) a retirement savings account under the *Retirement Savings Accounts Act 1997* of the Commonwealth; and
 - (c) the Superannuation Holdings Accounts Reserve established by the *Small Superannuation Accounts Act 1997* of the Commonwealth.
10. **Regulated superannuation funds** are funds that are regulated under the *Superannuation (Supervision) Act 1993* (Cwth). The majority of employers contribute to superannuation funds regulated under this Act. Contributions, or obligations to contribute, to such funds are wages liable to pay-roll tax.
11. Generally, regulated superannuation funds (excluding exempt public sector superannuation funds) are complying funds for the purposes of the *Income Tax Assessment Act*.
12. **Unregulated funds** and unfunded public sector funds are granted special treatment under the pay-roll tax legislation. The following information provides further detail on the pay-roll tax obligations of employers contributing to such schemes.
13. Where an employer participates in an unregulated fund or an unfunded regulated public sector fund, the type of superannuation scheme underlying the fund is important for the purposes of correctly returning pay-roll tax. Superannuation schemes are generally of two types, being accumulation schemes or schemes that provide a defined benefit.
14. An accumulation scheme is a scheme where the benefit is determined by the amount contributed, and any earnings on such contributions. Accumulation schemes operate in a similar way as an ordinary bank account. Such a scheme may also consist of the notional crediting of an account set aside in the books of an employer for an employee, without the amount being funded at that time.
15. A defined benefit is a benefit payable under a superannuation fund that is defined by:
- (a) the amount of an employee's salary at a particular date, whether the date of the employee's termination, retirement or an earlier date;
 - (b) the amount of the employee's salary averaged over a period ending on any such date; or
 - (c) a declared amount.
16. Examples of schemes that provide a defined benefit include where a superannuation scheme will pay a benefit on retirement of one year's salary for every five years of service or, an amount specified in a contract, award or other agreement.

17. Where an employer is required to contribute at some time to an employee's superannuation scheme that provides a defined benefit, then an actuary is required to calculate the required contribution amount relevant to each pay-roll tax return period.
18. The contribution amount in respect of an employee for each pay-roll tax period, is an amount that an actuary determines would be sufficient to fully provide for the superannuation entitlement accruing under the scheme.
19. In calculating the contribution amount, the actuary is required to take into account a prescribed notional earnings rate on the amount.
20. The pay-roll tax scheme provides for a three-year contribution assessment period. This means that the calculation of the required contribution rate by an actuary covers pay-roll tax returns that are to be lodged during that three-year period.
21. At the expiry of the contribution assessment period, an employer is required to have an actuary recalculate the required contribution amount for the following three-year contribution assessment period.
22. The contribution amount calculated by an actuary is to be determined in accordance with *Pay-roll Tax Regulations* which require the calculation to be based on actuarial assumptions and professional standards issued by the Institute of Actuaries of Australia including such factors as:
 - (a) future salary levels;
 - (b) mortality rates; and
 - (c) employer turnover.
23. In addition, for the purposes of the actuary's determination, the earnings rate on the notional contributions is the 10-year Commonwealth Bond Yield rate existing on the day on which the determination is made.

Northern Territory Government Agencies

24. Special rules apply to Northern Territory Government Agencies that are not Government Business Divisions where such agencies contribute to unfunded public sector schemes that provide a defined benefit.
25. Northern Territory Government Agencies (excluding Government Business Divisions) are to include superannuation contributions of an amount equal to the calculation of the superannuation guarantee charge multiplied by the agency's wages (excluding any fringe benefits or superannuation contributions).
26. In the case of Government Business Divisions, superannuation contributions are determined using the actuarial calculation.

Determining the assessable contributions for other unregulated schemes.

27. Where a contribution is made either by physical payment, or by book entry, the amount of the contribution credited in relation to the superannuation scheme shall be the contribution for the purposes of pay-roll tax returns.

Prepaid Superannuation Contributions made prior to 1 July 1999

28. A transitional anti-avoidance measure applies to enable the Commissioner to determine certain "prepayments" of superannuation contributions made on or after 27 April 1999 (being the date the Treasurer announced the pay-roll tax amendments) but before 1 July 1999 to be taxable. In such a case, the prepayment is deemed to be made on 1 July 1999 rather than the earlier date (and thus, is subject to pay-roll tax).

Position prior to 1 July 1999

29. Prior to 1 July 1999, subsection 3(1) of the Act defined "wages" as –
- "wages, salary, commission, bonus, allowance or other benefit paid or payable.... (in cash or in kind) to or in relation to an employee as such....".
30. This definition is broad enough to include all superannuation contributions by an employer within the pay-roll tax base.
31. However, for contributions made prior to 1 July 1999, the principle adopted by this Office is those contributions required to be made by an employer pursuant to the superannuation guarantee scheme or an industrial award (ie. an award, order, determination or industrial agreement in force under a law of the Commonwealth or of a State or Territory of the Commonwealth) are not liable for pay-roll tax.
32. This principle is based on the Commissioner's view that superannuation contributions made to satisfy obligations under the superannuation guarantee scheme or an industrial award are legislatively required and non-discretionary in nature and do not result from a substitution of otherwise taxable wages for superannuation contributions.
33. However, that part of a contribution by an employer in excess of the mandatory superannuation requirements does fall within the definition of "wages". These excess contributions may arise in a number of circumstances. For example, as part of a remuneration package, or under a salary sacrifice arrangement between the employee and employer, or pursuant to the employer's policy to contribute greater amounts than required under the superannuation guarantee scheme or an industrial award.

If employers are unsure of whether a payment to a superannuation fund is liable to pay-roll tax, they should refer the case for consideration by this Office. Where applicable, audit activity by this Office will pursue the position set out in this circular.

For general assistance, please contact the Office on ☎(08) 8999 7949.

COMMISSIONER OF TAXES