

CLIENT ALERT - OCTOBER 2010

Superannuation issues

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Timing of superannuation guarantee payments

Superannuation guarantee contributions, currently 9% of ordinary time earnings, must be paid by the employer by the 28th day after the end of each quarter (such as 28 October for the September quarter). But when is such an amount considered to be paid?

The ATO in SCD 2005/6 states that a contribution is a "contributed amount" when received by the fund. Similarly in TR 2010/1 and TR 2009 D3 the ATO states that a superannuation contribution "is made when it is received by the superannuation provider".

So in order for an employer to meet its superannuation guarantee obligations the payment of the 9% super must be made so as to be received by the fund by the 28th of each quarter.

A payment on the 28th may not be "received" by the fund. Clearly, if payment is made by cheque then it should be processed many days in advance.

It should be noted that electronic transfers are not always processed on the same day. Care needs to be had regarding electronic transfers made on the 28th day after the end of each quarter. In many cases if you complete a transfer via NetBank to another Australian financial institution before 6pm on a business day, the funds may only be available in the recipient's account within 1-2 business days, sometimes 3 days. This may lead to a failure to meet your superannuation guarantee obligations.

Some public superannuation funds state that transactions received after certain times will not be regarded as received. Some public funds even indicate that the superannuation contributions should be made as much as 10 days prior to closing to ensure arrival by the due date.

A further complication may occur when the 28th day falls on a weekend or public holiday. The ATO has indicated, in SGD 2001/2 that "superannuation contributions can count towards that period if made on or before the next working day". Therefore when a cut-off date for payment falls on a Saturday, Sunday or public holiday, you can make the payment on the next working day after the cut-off date. However, in such cases the contributions will not have been received by the fund and, notwithstanding the ATO ruling, from a fund perspective the contribution will have been received late. In such cases it is presumed that the ATO will consider the obligation as being met.

If you pay a super guarantee contribution through a clearing house, it is counted as being paid on the date the super fund receives it, not the date the clearing house receives it (unless you use the Small Business Superannuation Clearing House service via Medicare). So again, if you are using the services of a clearing house other than Medicare you need to ensure that your superannuation contributions are paid well ahead of the 28th day after the end of the quarter.

The above comments indicate that proper accounting records must be kept in order to satisfy the condition for payment and deductibility of superannuation guarantee contributions, and to make appropriate allowance for the receipt of funds.

Claiming personal superannuation contributions to your fund

We remind all clients that if you intend to claim a tax deduction for your personal super contributions, you must complete the Australian Taxation Office's (ATO) Notice of intent to claim or vary a deduction for personal super contributions form (NAT 71121).

While it may seem odd, if you are a trustee of your superannuation fund, the ATO requires that you must also complete an 'acknowledgement', by you as trustee, of the valid notice that you have completed.

You must keep records of the following information:

- the date the original notice was completed;
- any subsequent variations to the original notice;
- your SMSF member details;
- the total amount of personal contributions that the original notice covers and, of those contributions, the amount you intend to claim as a deduction; and
- either the dates the contributions were made or the income year in which they were made.

The notice and acknowledgment must be completed by the earlier of:

- the day you lodge your individual income tax return in the year in which the contributions were made; or
- the end of the income year following the income year in which the contributions were made.

This information also will be needed to complete the annual tax return of your SMSF.

Timing of payment of personal superannuation contributions

If you want to claim a deduction for a personal superannuation contribution for the 2011 income tax year, then the contribution needs to be received by the fund before the close of business on 30 June 2011. In the case of self managed funds it can be argued that the receipt of a cheque by the trustee (while not yet banked) is evidence of the contribution being made. The ATO's view appears to be that a contribution by cheque is made at the time it has been "received" by the trustee of the superannuation fund (TR 2010/1). This may not be the case with a public fund as there is no evidence of receipt until banked although the ATO indicates that it is a contribution if "the cheque is able to be presented for the payment" otherwise, presumably the same "rules" would apply as in the case of superannuation guarantee payments above.

Superannuation reserves

One aspect of Superannuation that is not often used by self managed super funds (SMFs) is that of the use of reserves. Reserves enable an SMF to "hold back" earnings so that they can be distributed to members at a later date. Such amounts do not form part of a member's entitlement.

Reserves may comprise a general reserve, an investment reserve, a pension reserve, a revaluation reserve or some other type of reserve. A reserve may be used to "top up" earnings in low income years, thus assisting in the payment of pensions. They may also be used to top up a member's balance upon death in order to fund an "anti-detriment" payment.

An anti-detriment payment is only paid following the death of a member. The aim of anti-detriment payments is to "recompense the dependants of the deceased member" for the 15% contributions tax paid by the trustee of the fund during the member's lifetime. Such an amount of course ultimately forms part of any lump sum death benefit payable to the deceased member's spouse and or children.

The use of reserves for anti-detriment payments also may reduce a fund's capital gains tax obligations following the death of a member.

In order to make use of reserves in such a way it is necessary to ensure that the fund's trust deed allows for the use of reserves and for the funding of anti-detriment amounts.

Minimum pension amounts

Temporary drawdown relief continues to apply to allocated and market linked pensions and account based pensions for the 2011 income year. The minimum pension amounts are: member age under 65 -2%; 65-74 – 2.5%; 75-79 3%; 80-84 3.5%; 85-89 4.5%; 90-94 5.5%; 95 and over 7%.