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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

SUPERANNUATION GUARANTEE (ADMINISTRATION) BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer,
the Hon John Dawkins, M.P.)

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General Outline and Financial Impact of the Amendments

The amendments will amend the Superannuation Guarantee (Administration) Bill 1992 ("the Bill") to:

substitute new tables of charge percentages for the existing tables in the Bill. The new tables will specify lower charge percentages in certain years and include two additional years (ie. 2001-2002 and 2002-2003); ***[Amendments (10) and (11)]***

raise the annual national payroll threshold for an employer from $500,000 to $1,000,000. The employer's annual national payroll is used to determine the employer's charge percentage, eg. 3% or 4%/5% for 1992-93; ***[Amendments (10), (11) and (18)]***

lower the charge percentage for larger employers (ie. employers with an annual national payroll greater than $1 million) from 5% to 4% for the period 1 July 1992 to 31 December 1992 and then provide for a regulation to be made to increase the rate to 5% from 1 January 1993. (If this regulation is disallowed by either House of the Parliament the 4% rate will apply for the whole of the 1992-93 year); ***[Amendment (10)]***

- change the contribution period (ie. the period for which superannuation support is measured) for the 1992-93 year from an annual period to two 6 month periods commencing on 1 July 1992 and 1 January 1993. (This change is required because of the change outlined in the paragraph above); ***[Amendments (1), (2), (6), (8) and (15)]***

change the contribution period in the 1993-94 and subsequent years from a monthly to a quarterly basis; ***[Amendments (1), (3), (7) and (9)]***

raise the level of salary and wages at which an employer need commence making superannuation

contributions in respect of any employee from $250 to $450 a month. This means that an employer is not expected to provide superannuation support for an employee unless the employee earns $450 or more a month; ***[Amendment (17)]***

- ensure that the period for which 'excluded salary and wages' are paid is not taken into account in the calculation of the reduction of the employer's charge percentage (under clauses 22 and 23). Excluded salary and wages means salary and wages which are generally not taken into account for superannuation guarantee purposes; ***[Amendment (16)]***
- provide that payments made to a person who holds, or performs the duties of an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or a Territory (including members of the defence force or a police force), or to a person who is a member of a local government council, are only taken to be salary and wages for superannuation guarantee purposes if they constitute remuneration of that person; ***[Amendment (5)]***
- ensure that contributions to a defined contribution superannuation fund are treated as having been paid to a complying superannuation fund, where there are reasonable grounds for believing the fund is a complying superannuation fund at the time the contributions are made;
  [Amendments (16), (20) and (21)]
- ensure that a benefit certificate relating to a defined benefit superannuation scheme is treated as effective for any part of the contribution period in which it is specified to have effect, if there are reasonable grounds (during the period) for believing that the scheme is a complying superannuation scheme; ***[Amendment (16)]***
- allow a benefit certificate which is issued on or before 14 August in a year to have effect from the date

specified on the certificate; that date may be as early as 1 July of the preceding year; ***[Amendment (4)]***

ensure that a reduction in the charge percentage for an employer in respect of an employee under clause 22 is only allowed in relation to that part of the contribution period in which a benefit certificate is effective; ***[Amendments (12), (13) and (14)]***

ensure that, in the event of a company going into liquidation, the superannuation guarantee charge has the same priority for payment as employee salary and wages in terms of paragraph 556(1)(e) of the Corporations Law; ***[Amendment (19)]***

impose certain conditions on company receivers including an obligation to retain sufficient assets to satisfy the payment of the superannuation guarantee charge. ***[Amendment (19)]***

The amendments are not expected to have a significant impact on the revenue.

Amendments to the Calculation of Individual Shortfalls

Summary of proposed amendments

The proposed amendments will make the following changes which will affect the calculation of an employer's individual superannuation guarantee shortfall in respect of an employee:

- New tables of charge percentages will be substituted for the existing tables in the Bill. The new tables will specify lower charge percentages in certain years and include two additional years (ie. 2001-2002 and 2002-2003);
- The annual national payroll threshold for an employer will be raised from $500,000 to $1,000,000. The employer's annual national payroll is used to determine the employer's charge percentage, eg. 3% or 4/5% for 1992-93;
- The charge percentage for larger employers (ie. employers with an annual national payroll greater than $1 million) will be lowered from 5% to 4% for the first 6 months of the 1992-93 year. A regulation can be made to increase the 4% to 5% from 1 January 1993. (If this regulation is disallowed, the 4% rate will apply for the whole of the 1992-93 year);
- The contribution period (ie. the period for which superannuation support is measured) for the 1992-93 year will be changed from an annual period to two 6 month periods commencing on 1 July 1992 and 1 January 1993 (as a result of the change above);
- The contribution period for the 1993-94 and subsequent years will be changed from a monthly basis to a quarterly basis.

Explanation of proposed amendments

Level of superannuation support an employer is expected to provide

The level of superannuation support an employer is expected to provide depends on the amount of the employer's "annual national payroll" and the financial year in which the employer is an employer for a full year. An employer's "annual national payroll" for a year is the total amount of salary and wages paid during the year by the employer in Australia and outside Australia in relation to services performed or rendered wholly in Australia .

If the employer was an employer for the whole of the 1991-92 year the "charge percentage", ie. the expected percentage level of superannuation support, is based on the employer's annual national payroll for the year ending on 30 June 1992. Under the proposed amendments the charge percentage will be determined as follows:

	Employer's payroll $1 million or less	Employer's payroll more than $1 million
1992-93	3	4/5*
1993-94	3	5
1994-95	4	5
1995-96	5	6
1996-97	6	6
1997-98	6	6
1998-99	7	7
1999-00	7	7
2000-01	8	8
2001-02	8	8
2002-03 and subsequent years	9	9

* Refer to the section below explaining the charge percentage for the 1992-93 year.

An employer will use whatever column applies in the 1992-93 year for all subsequent years irrespective of changes to the employer's annual payroll. For example, if an employer's annual national payroll was $850,000 for the year ended 30 June 1992 and $1,100,000 for the year ended 30 June 1993, the employer's charge percentages for the 1992-93 and 1993-94 years will be 3%.

If an employer was not an employer for the whole of the 1991-92 year, the employer will use the charge percentage in the first column in the above table until such time as the employer is an employer for a full financial year. If, in that first full financial year, the employer's annual national payroll exceeds $1 million, the employer will use the second column in the above table for the year following the full financial year and all subsequent years. Otherwise, the employer will continue to use the first column in the table for all years.

For example, assume an employer commenced as an employer on 1 January 1992 and has annual national payrolls of $600,000, $1,250,000 and $1,500,000 for the 1991-92, 1992-93 and 1993-94 years respectively. The employer's charge percentage will be 3% for the 1992-93 year, but 5% for the 1993-94 year because the employer's annual national payroll for the employer's first full financial year (i.e., the 1992-93 year) exceeds $1 million.

Charge percentage for 1992-93 year

If an employer was an employer for the whole of the 1991-92 year and has an annual national payroll in excess of $1 million for that year:

- for the period 1 July 1992 to 31 December 1992 the employer's charge percentage will be 4%; and
- for the period 1 January 1993 to 30 June 1993 the employer's charge percentage is expected to be 5%.

The proposed amendment provides that the increase in the charge percentage from 4% to 5% on 1 January 1993 will only occur if:

within 28 days of the Superannuation Guarantee (Administration) Bill 1992 receiving Royal Assent a regulation is made to increase the rate to 5%; and

- that regulation is not disallowed before the end of the second sitting day (for both Houses of Parliament) after 8 December 1992, or before 31 December 1992, whichever is earlier.

If a regulation is not made or is disallowed in the period set out above the charge percentage for the period 1 January 1993 to 30 June 1993 will be 4%.

Contribution periods

1992-93 year

As two charge percentages may apply in the 1992-93 year (for employer's with annual national payrolls in excess of $1 million), it is necessary to change the contribution period for the 1992-93 year from an annual basis to two 6 monthly periods, the first commencing on 1 July 1992 and the other commencing on 1 January 1993. (Definition of "contribution period" and "half-year" in subclause 6(1) and new clause 18.)

Although the level of superannuation support will be measured on a 6 monthly basis, the calculation of the superannuation guarantee charge will still be annual.

A further amendment will ensure that contributions which are made at any time on or after 1 July 1992 and on or before 14 August 1993 may be taken into account as if they had been made during *either* of the 6 monthly contribution periods in 1992-93. ***[New subclause 23(6)]***

1993-94 year

Under the existing Bill, an employer's level of superannuation support for the 1993-94 and subsequent years is calculated on a monthly basis (ie, there are monthly contribution periods). Amendments will be made to change this monthly basis to a quarterly basis with each quarter commencing on 1 July, 1 October, 1 January, and 1 April of

the 1993-94 and subsequent years. (Definition of "contribution period" and "quarter" in subclause 6(1) and new clause 19.)

Maximum contribution base

Clause 15 of the existing Bill sets out a maximum contribution base. This puts an upper limit on the amount of superannuation support that an employer is expected to provide for the benefit of an employee and is a limit on earnings.

For 1992-93 the limit is $80,000. It is indexed for later years and converted to a monthly amount. It is proposed to make amendments to clause 15 as a consequence of the need to provide for two contribution periods in 1992-93 and the change from a monthly to a quarterly basis for subsequent years.

These amendments will provide that the maximum contribution base for either of the two six monthly periods in 1992-93 is $40,000. For subsequent years the maximum contribution base will be indexed and on a quarterly basis.

Exemption for Low Income Earners

Summary of proposed amendment

The amendment will raise the level of salary and wages at which an employer is expected to provide superannuation support in respect of an employee to $450 or more a month.

Explanation of proposed amendment

Under the existing Bill, subclause 24(2) provides that an employer will not have to provide superannuation support for an employee in any month when the employee receives salary and wages of less than $250. The proposed amendment will increase this threshold so that an employer does not have to provide superannuation support unless the employee receives salary and wages of $450 or more a month.

Certain Periods not to Count as Periods of Employment

Summary of the proposed amendment

The amendment will ensure that any period for which 'excluded salary and wages' are paid is not taken into account in the calculation of the reduction in the employer's charge percentage (under clauses 22 and 23).
[New clause 23C]

Explanation of the proposed amendment

Under the existing provisions of the Bill an employer does not have to provide superannuation support for certain employees. For example, where an employee receives salary and wages of less than $450 in a month, or where salary or wages are paid to certain non-resident employees or to an employee 65 years of age or older. This sort of excluded salary and wages is not taken into account for superannuation guarantee purposes in accordance with clauses 24 and 25 of the Bill.

Although excluded salary and wages are not taken into account in determining an employer's individual superannuation guarantee shortfall in respect of an employee, the period for which they are paid is taken into account in determining the reduction in the employer's charge percentage under clauses 22 and 23 of the Bill. This can result in the employer being taken to have provided a smaller amount of superannuation support than should be the case.

The proposed amendment will ensure that the period for which excluded salary and wages are paid is excluded from the calculation of the reduction in the employer's charge percentage under clauses 22 and 23 of the Bill.

"Payments" to Certain Employees

Summary of the proposed amendment

The amendment will ensure that payments to local government councillors and similar office holders are not taken to be salary and wages unless they constitute remuneration for services or work done by the office holder.

Explanation of the proposed amendment

Subclause 12(9) of the Bill provides that a person who holds, or performs the duties of an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or a Territory (including members of the defence force or a police force) is an employee of the Commonwealth, State or Territory. Similarly, a member of a local government council is deemed to be an employee of that council (subclause 12(10)).

Paragraph 11(1)(e) of the Bill specifically deems "payments" to these employees to be "salary and wages" for superannuation guarantee purposes. The term payments is very wide and could encompass a payment which is not salary and wages.

The amendment will substitute the term remuneration for the term payment. This will ensure that only payments for services or work done by the employee are considered to be salary and wages.

Payments Deemed to be made to a Complying Superannuation Fund or Scheme

Summary of the proposed amendments

The proposed amendments will ensure that if an employer makes superannuation contributions to a superannuation fund that is not a defined benefit superannuation scheme, those contributions will be treated as having been made to a "complying superannuation fund" for superannuation guarantee purposes provided there are reasonable grounds for believing that the fund is a complying fund at the time the contributions are made. This will be the case even if the fund is subsequently found to have been a non-complying fund for taxation purposes.

In the case of a defined benefit superannuation scheme, a separate amendment will ensure that a benefit certificate relating to the scheme will be treated as a benefit certificate in relation to a "complying superannuation scheme", provided there are reasonable grounds for believing that the scheme is a complying scheme. This amendment will apply even if the scheme is subsequently found to have been a non-complying scheme for taxation purposes.

Explanation of the proposed amendments

These amendments are designed to protect employers who make superannuation contributions to a fund that they believe is a complying superannuation fund but which is subsequently found to be a non-complying fund. Under the existing provisions of the Bill, if the fund turns out to be a non-complying fund, the employer's contributions will not satisfy the superannuation guarantee requirements. However, by the proposed amendment, employers in this position will be taken to have made their contributions to a complying superannuation fund.

Defined contribution funds

The amendment will allow contributions made by an employer to a defined contribution fund (ie. a fund that is not a defined benefit superannuation scheme) to be treated as having been made to a "complying superannuation fund" if at the time the contribution is made the following requirements are satisfied:

- the employer has received a statement from the trustee of the fund that the fund is operating in accordance with the superannuation fund conditions under the Occupational Superannuation Standards Act ("the OSS Act"); and
- since receiving the statement, the employer has not been notified by the trustee of the fund that the fund has breached a superannuation fund condition under the OSS Act. ***[New subclause 23B(1)]***

These provisions will *not* apply to treat contributions as having been made to a complying superannuation fund:

- if the employer, or an associate of the employer (in terms of subsection 26AAB(14) of the Income Tax Assessment Act 1936 ("ITAA")), is a trustee or a manager of the fund; and
- it is reasonable to conclude that the employer knew (or should have known) that the fund was not operating in accordance with the superannuation fund conditions under the OSS Act;
  [New subclause 23B(2)]

Broadly, the effect of this amendment is that, if there is no association between the employer and the trustees or managers of the fund, contributions by an employer to a defined contribution fund which has given the employer an undertaking that it is complying with the superannuation fund conditions under the OSS Act (and which has not subsequently notified the employer that it has breached these conditions),will be taken to have been made to a "complying superannuation fund".

If the employer has been notified of a breach, contributions made to the fund after that time will not be treated as contributions to a complying superannuation fund under the new provisions of clause 23B. However, if the superannuation fund rectifies the breach to the satisfaction of the Insurance and Superannuation Commissioner and the trustee of the fund notifies the employer to this effect, the employer can re-commence making contributions to the fund and those contributions will be taken to be contributions to a complying superannuation fund.

It should be noted that even if these requirements are not satisfied, contributions made by an employer to a superannuation fund will be taken into account if the fund is, in actual fact, a complying superannuation fund. (Clause 7 of the Bill defines a complying superannuation fund or scheme). This could be the case if the employer has not obtained a written statement or if the breach of a superannuation fund condition is rectified in such a way that the fund is taken to be a complying superannuation fund even when in breach of the conditions. (See proposed new subsection 12(3A) of the OSS Act - Superannuation Guarantee (Consequential Amendments) Bill 1992).

Connection between employer and the fund

The amendment provides that if the employer, or an associate of the employer within the meaning of subsection 26AAB(14) of the ITAA, is a trustee or a manager of the fund and, in view of this, it is reasonable to conclude that the employer knew, or should have known, that the fund was not operating in accordance with the superannuation fund conditions under the OSS Act, then the new provisions which deem contributions to be made to a complying superannuation fund do not apply.

Meaning of "associate"

The definition of "associate" in subsection 26AAB(14) of the ITAA is summarised as follows -

1. If the employer is a *natural person* (other than a trustee) the following are associates:

   (a) a relative (see the definition of "relative" in subsection 6(1) of the ITAA);

   (b) a partner;

   (c) the spouse or a child (see the definition of "child" in subsection 6(1) of the ITAA) of a partner;

   (d) a trustee of a trust estate where the employer or an associate benefits or is capable of benefiting under the trust either directly or indirectly;

   (e) a company where either:

      (i) the company is, or its directors are, accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the employer and/or an associate or associates (including a company which is an associate by virtue of this subparagraph), or

      (ii) the employer is and/or persons who are associates of the employer (including a company which is an associate by virtue of (i)) are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting.

2. If the employer is a *company* (other than a trustee) the following are associates:

   (a) a partner;

   (b) the spouse or a child of a partner;

   (c) a trustee of a trust estate where the employer or an associate benefits or is capable of benefiting under the trust either directly or indirectly;

   (d) another person where either:

(i) the employer company is, or its directors are, accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of that person or of that person and another person or other persons, or

(ii) that person is, or that person and his or her associates are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the employer company;

(e) another company where either:

(i) the other company is, or its directors are, accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the employer company and/or an associate or associates of the employer company, or

(ii) the employer company is, and/or the persons who are associates of the employer company are, in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other company;

(f) a person who is an associate of the other person referred to in (d).

3. If the employer is a *trustee of a trust estate* the following are associates:

(a) any person who benefits or is capable of benefiting under the trust estate either directly or indirectly;

(b) any associate of a natural person who is an associate by virtue of (a);

(c) if a company is an associate by virtue of (a) or (b), any associate of the company.

4. If the employer is a *partnership* the following are associates:

   (a) a partner;

   (b) any associate of a partner.

Meaning of "relative" and "child" for the purposes of subsection 26AAB(14) of the ITAA

A "relative" in relation to a person means any of the following:

- the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that person or his or her spouse; and
- the spouse of that person or any other person specified in the paragraph above.

A "child" in relation to a person includes an adopted child, a step-child or an ex-nuptial child of that person.

Determining whether "reasonable grounds" exist

Subclause 23B(2) ensures that if the employer, or an associate of the employer, is a trustee or manager of the fund, and the employer has *reasonable grounds* to believe that the fund is not operating in accordance with the superannuation fund conditions under the OSS Act, then contributions to the fund are *not* deemed to be made to a complying superannuation fund.

In determining whether there are reasonable grounds for the employer to believe that the fund is not operating in accordance with the OSS standards, it is expected that the following types of factors will be taken into account:

(a) the position the employer or associate holds in the fund;

(b) if the associate is a trustee or manager of the fund, the nature of the connection between the employer and the associate;

(c) the degree of involvement the employer or associate has in the activities or operation of the fund;

(d) the nature of the breach of the superannuation fund conditions, the manner in which it occurred, the circumstances surrounding the breach (including the persons involved in the transactions or actions which caused the breach and their connection with the employer or the associate) and the consequences of the breach; and

(e) any other factors which would have a bearing on determining the degree of knowledge the employer had about whether the fund was operating in accordance with the superannuation fund conditions under the OSS Act.

Defined Benefit Superannuation Scheme

In the case of a defined benefit superannuation scheme, the test for determining whether superannuation guarantee requirements are satisfied is not whether contributions have been made to a complying superannuation scheme, but whether a benefit certificate in relation to a complying scheme has effect for the contribution period. To ensure that employers contributing to a defined benefit superannuation scheme have a similar level of protection to employers contributing to a defined contribution fund, a further amendment is proposed. ***[New clause 23A]***

The amendment will provide that a benefit certificate issued in relation to a superannuation scheme will be taken to be a benefit certificate in relation to a "complying superannuation scheme":

(a) from the day that the employer receives the notice from the trustees of the scheme that the scheme is operating in accordance with the superannuation fund conditions under the OSS Act; or, if earlier

(b) from the beginning of the contribution period (or the part of the contribution period if the benefit certificate only has effect for a part of the period), provided the

employer receives a written statement from the trustee, within 30 days of that day, stating that the scheme is operating in accordance with the superannuation fund conditions under the OSS Act and that it was operating in this way from the day on which the benefit certificate took effect.

The benefit certificate will be treated as a benefit certificate in relation to a complying superannuation scheme until such time as the employer is notified by the trustee that the scheme has breached a superannuation fund condition under the OSS Act. If this occurs, the employer will have to make other arrangements in order to satisfy superannuation guarantee requirements for the remainder of the contribution period.

If the scheme subsequently rectifies the breach to the satisfaction of the Insurance and Superannuation Commissioner and the scheme notifies the employer to this effect, then the second notice will cancel the first notice and from that time the benefit certificate will again be taken to be a benefit certificate relating to a complying superannuation scheme.

If the employer, or an associate of the employer in terms of subsection 26AAB(14) of the ITAA, is a trustee or manager of the scheme and, in view of this, it is reasonable to expect that the employer knew, or should have known, that the fund was not operating in accordance with the superannuation fund conditions under the OSS Act, then the benefit certificate will not be treated as relating to a complying superannuation scheme by proposed clause 23A.

It should be noted that even if these requirements are not satisfied, superannuation support provided through a defined benefit superannuation scheme can be taken into account if the scheme is, in actual fact, a complying superannuation scheme [see Clause 7 of the Bill].

The meaning of "associate" and "reasonable"

The meaning of the terms "associate" and "reasonable grounds" are outlined in the preceding sections of this supplementary explanatory memorandum under the headings "Meaning of associate" and "Determining whether reasonable grounds exist".

Distribution of shortfall component

Generally, the Commissioner of Taxation is required to pay the shortfall component of the superannuation guarantee charge to a complying superannuation fund for the benefit of the affected employee. (Clause 60)

Amendments proposed will provide that a superannuation fund will be taken to be a complying superannuation fund for these purposes if the trustee of the fund has notified the Commissioner that the fund is operated in accordance with the superannuation fund conditions under the OSS Act. This will not apply if the trustee later notifies the Commissioner that it is operating in breach of a superannuation fund condition. ***[see new subclause 60(2)]***

Benefit Certificates

Summary of the proposed amendments

The amendments make a number of technical changes in relation to benefit certificates required for defined benefit superannuation schemes, including the following:

- a benefit certificate which is issued on or before 14 August may have effect from the date specified on the certificate and that date may be as early as 1 July of the preceding year; and
- a reduction in the charge percentage for an employer in respect of an employee (under clause 22) will only be allowed in relation to that part of the contribution period in which a benefit certificate is effective.

Explanation of proposed amendments

Description of the notional employer contribution rate

The proposed amendment will amend the description of the notional employer contribution rate in subclause 10(2). The notional employer contribution rate in relation to a class of employees will be re-defined to mean the contribution rate required to meet the expected long-term cost to the employer of the minimum benefits accruing to all employees in that class from the date of effect of the benefit certificate onwards.

Subclause 10(6) will provide that regulations may make provisions about the way in which 'the contribution rate', 'the expected long-term cost to an employer of benefits accruing to all employees' and 'the minimum benefit accruing to all employees' are to be calculated.

The notional employer contribution rate is used to work out an employer's actual level of superannuation support provided in a defined benefit superannuation scheme. This

rate needs to be specified by an actuary in a benefit certificate.

The minimum benefits accruing to all employees in a class is the lowest benefit available to any employee in the class. For example, if the lowest employer provided benefit to an employee in the class is nil then the notional employer contribution rate in relation to that class is nil. This is the case even if other employees in the class receive an employer provided benefit.

Period that the benefit certificate has effect

A further amendment will provide that a benefit certificate which is issued on or before 14 August in a year (or within such further time as the Commissioner allows) may have effect from a date specified on the certificate earlier than the date of issue. The date specified on the certificate may be as early as 1 July of the previous year. (For example, a benefit certificate may be issued on 14 August 1993 and be specified to have effect from 1 July 1992.)
[New subclauses 10(4) and (5)]

A benefit certificate will cease to have effect when:

- the superannuation scheme to which the benefit certificate relates is amended in a way which affects (or may affect) the level or method of calculation of benefits provided under the scheme for the class of employees;
- another benefit certificate is issued; or
- a period of 5 years expires from the time of issue;

whichever occurs first. ***[Subclause 10(3)]***

Calculation of the reduction of the charge percentage

The calculation of the reduction of the employer's charge percentage under clause 22 will be amended so that the notional employer contribution rate shown on a benefit certificate only operates to reduce the employer's charge percentage in respect of an employee during any part of a

contribution period in which the benefit certificate is effective.

If a benefit certificate is only effective for part of the period that an employee is employed during the contribution period, the notional employer contribution rate is reduced by the fraction calculated as follows:

$$\frac{\text{period during which the benefit certificate has effect}}{\text{period of employment in the contribution period}}$$

Example

Assume an employee was employed by the employer for 3 months of the first contribution period in the 1992-93 year (ie 92 days) and a benefit certificate was effective for 2 of those months (ie. 61 days). The benefit certificate has a notional employer contribution rate of 6%. The employer's level of superannuation support provided under the scheme for the 1992-93 year for the employee will be:

$$6\% \times \frac{61}{92} = 3.98\%$$

[Note: Other adjustments may be made where the employee is a member of the superannuation scheme for less than his or her employment period]

Liquidators and Receivers

Summary of the proposed amendments

The amendment follows the principles of section 215 of the Income Tax Assessment Act 1936, and applies for the purpose of determining the status of superannuation guarantee charge debts where employers that are companies are placed in receivership or liquidation.

Explanation of the proposed amendments

Liquidation

Proposed clause 48A provides that in the event of a company going into liquidation, any superannuation guarantee charge payable by the company has the same priority for payment as debts referred to in paragraph 556(1)(e) of the Corporations Law, ie employee's salary and wages.

The effect of this provision is that a superannuation guarantee charge debt becomes a priority debt once a company commences to be wound up and the liquidator has an obligation to pay the charge in priority to ordinary unsecured debts.

Receivership

While a company is in receivership (but has not commenced to be wound up) the superannuation guarantee charge cannot be a priority debt in terms of the Corporations Law. The receiver (including a receiver and manager) cannot be required to treat the debt in a different way to any other unsecured debt. Accordingly, the proposed amendment only requires the receiver to *retain* sufficient assets of the company to satisfy the payment of the debt.

Under proposed clause 48B a receiver must notify the Commissioner in writing within 14 days that he or she has taken possession of the company's assets. The

Commissioner will then notify the receiver of the amount which the Commissioner considers should be sufficient to cover any superannuation guarantee charge that is or may become payable by the employer (this is called the "notified charge amount").

The receiver is obliged to retain assets of the company sufficient to pay the superannuation guarantee charge and any other prescribed tax owed to the Commissioner. Any other prescribed tax means other taxes and charges, the collection of which is the responsibility of the Commissioner. (A list of these other taxes and charges is set out in the definition section below.)

If the assets of the company are insufficient to meet the superannuation guarantee charge, any other taxes payable to the Commissioner and any other ordinary unsecured debts of the company, the value of the assets which are required to be set aside is determined by the formula in subclause 48B(3). The formula calculates the pro-rata entitlement of the Commissioner, as an ordinary creditor for the superannuation guarantee charge, to be paid out of the assets of the company available to pay all ordinary debts.

The following example illustrates the way the entitlement is to be calculated:

Example

Total value of assets of the company	$500,000
Secured creditors	$100,000
Total value of assets available to pay ordinary debts	$400,000
Amount notified by the Commissioner as income tax payable	$400,000
Amount notified by the Commissioner as fringe benefits tax payable	$ 50,000
Company's notified tax amount	$450,000
Amount notified by the Commissioner under subclause 48B(2) as superannuation	

guarantee charge payable (the "notified charge amount")	$ 2,000
Sum of company's other ordinary debts	$500,000
Total ordinary debt	$952,000

Value of assets to be set aside (for superannuation guarantee charge under subclause 48B(3)) is:

Total value of assets available to pay ordinary debts	x	notified charge amount / notified charge amount + company's notified tax amount + sum of company's other ordinary debts	
i.e., 400,000	x	2,000 / 952,000	= $840

The receiver is liable to pay the superannuation guarantee charge to this extent.

Until notified by the Commissioner, the receiver is not allowed to part with the company's assets except to pay debts of the company which are not "ordinary debts" ***[paragraph 48B(3)(a) and subclause 48B(5)]***. An "ordinary debt" is defined in subclause 48B(6) to mean a debt which is an unsecured debt and is not a debt that, under a Commonwealth, State or Territory law, is payable in priority to some or all of the other debts of the employer.

It is an offence for a receiver to contravene clause 48B or fail to pay the required superannuation guarantee charge ***[subclause 48B(7)]***. On conviction, the maximum penalty is $1,000.

Definitions

Some of the terms used in clause 48B are explained below:

Company's **"notified tax amount"** is used in the formula set out in subclause 48B(3). It is the amount of other taxes and charges which the Commissioner has notified the company or the receiver is payable. These other taxes and charges are:

fringe benefits tax;

income tax;

unpaid company tax;

trust recoupment tax;

sales tax;

Territories pay-roll tax;

petroleum resource rent tax;

tobacco charge;

training guarantee charge;

wool tax.

"**Superannuation guarantee charge**" is defined to include late payment penalty imposed under clause 46 or penalty charge imposed under Part 7 of the Bill. Both of these penalties are referred to as additional superannuation guarantee charge.