

Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997 No. 371

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 371

Issued by the Authority of the Assistant Treasurer

Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997

Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations

The *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* ('the Act') provides for the assessment and collection of the superannuation contributions surcharge payable on the surchargeable superannuation contributions of members of constitutionally protected superannuation funds who are high income earners. Section 36 of the Act provides that the Governor-General may make regulations for the purposes of the Act prescribing matters required or permitted by the Act or necessary or convenient for carrying out or giving effect to the Act.

The purpose of the regulations is to prescribe administrative matters to assist the assessment and collection of the superannuation contributions surcharge payable on the surchargeable superannuation contributions of members of constitutionally protected superannuation funds who are high income earners.

The regulations:

- * prescribe additional matters of information to be given by trustees of constitutionally protected superannuation funds under subsections 12(2), 12(3) and 12(6) of the Act (regulations 3, 4 and 5),
- * allow the Commissioner of Taxation ('the Commissioner') to specify how and where information is to be given to the Commissioner (regulations 6 and 7);
- * provide rules for determining a person's address for service and last known place of business or residence in Australia (regulations 8 and 9);
- * require trustees of constitutionally protected superannuation funds to update the Commissioner with changes and omissions in information given to the Commissioner and tax file numbers (regulations 10 and 11);
- * allow the Commissioner to mark or annotate information given to the Commissioner (regulation 12);
- * provide rules governing the acceptance of information by the Commissioner, service of documents, signatures on documents, rounding of amounts and reimbursement of expenses for persons attending before the Commissioner (regulations 13, 15, 16, 17, 18 and 19); and
- * allow the Commissioner to request information in connection with the operation or possible future operation of the Act and these Regulations (regulation 14).

The regulations are described in detail in the attachment. The regulations commence on gazettal.

ATTACHMENT

Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations

COMMENCEMENT OF THE REGULATIONS

The Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations ('the Regulations') commence on gazettal.

BACKGROUND TO THE REGULATIONS

The *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (the Act) provides for the assessment and collection of the superannuation contributions surcharge payable on the surchargeable superannuation contributions of members of constitutionally protected superannuation funds who are high income earners.

Section 36 of the Act enables regulations to prescribe matters required or permitted by the Act or necessary or convenient for carrying out or giving effect to the Act.

Paragraph 12(2)(c) of the Act enables regulations to prescribe additional matters that trustees of constitutionally protected superannuation funds ('superannuation providers') are required to give in respect of a member to the Commissioner of Taxation ('the Commissioner') if the member is a member of the constitutionally protected superannuation fund at the end of a financial year.

Paragraph 12(3)(d) of the Act enables regulations to prescribe additional matters that superannuation providers are required to give in respect of a member to the Commissioner if any contributed amounts of the member are paid to the member.

Paragraph 12(6)(d) of the Act enables regulations to prescribe additional matters that superannuation providers are required to give in respect of a member to the Commissioner if a lump sum or a pension becomes payable for the benefit of the member.

Subsection 32(4) of the Act enables regulations to prescribe scales of expenses to be allowed to persons required to attend before the Commissioner under section 32 of the Act.

The Regulations prescribe information to be given by superannuation providers to the Commissioner and other matters necessary or convenient for the assessment and collection of the superannuation contributions surcharge on members of constitutionally protected superannuation funds.

EXPLANATION OF THE REGULATIONS

Regulation 1 - Citation

Regulation 1 provides that the Regulations may be cited as the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations.

Regulation 2 - Interpretation

Regulation 2 contains definitions of terms used in the Regulations.

Regulation 2 defines the following amounts "direct employer-contributed amount", "direct specified roll-over amount", "roll-in employer-contributed amount" and "roll-in specified roll-over

amount". Under regulation 3 of these Regulations, superannuation providers will be required to provide details of these amounts in respect of a member to the Commissioner if at the end of a financial year the member is a member of a constitutionally protected superannuation fund of which the provider is the trustee. Superannuation providers will be required to provide the details as known to them (paragraph 13(2)(a) of the Regulations).

For a superannuation (accumulated benefits) provider, the "direct employer-contributed amount" is the amount of surchargeable contributions (other than specified roll-over amounts) that have been made directly by an employer for the member to the constitutionally protected superannuation fund administered by the provider during the relevant financial year that have been retained in the fund. The amount also includes any allocated surplus amounts allocated in the relevant financial year that have been retained in the fund. The "roll-in employer-contributed amount" is the amount of direct employer-contributed amounts which were made or allocated in other superannuation funds but transferred to the constitutionally protected superannuation fund administered by the provider during the financial year.

For a superannuation (defined benefits) provider, the "direct employer-contributed amount" is the amount of the member's surchargeable contributions (as calculated under subsection 9(3) of the Act) for the relevant financial year less the member's surchargeable contributions transferred to the provider in the financial year. The "roll-in employer-contributed amount" is the amount of the member's surchargeable contributions transferred to the constitutionally protected superannuation fund administered by the provider from another superannuation fund during the financial year.

Section 9 of the Act explains what are the member's surchargeable contributions for a financial year. Subsection 9(4) of the Act provides a modified definition of the member's surchargeable contributions for the 1996/97 financial year.

The terms "direct specified rollover amounts" and "roll-in specified rollover amounts" have corresponding meanings in relation to a "specified rollover amount" which is defined by section 37 of the Act.

A superannuation provider that has paid a contributed amount of a member to a member in a financial year will also be required to report the applicable components of the amount (ie. direct or roll-in, employer-contributed or specified rollover) under regulation 4 of these Regulations.

Regulations 3, 4 and 5 - Information requirements under subsections 12(2), 12(3) and 12(6) of the Act

Regulations 3, 4 and 5 prescribe additional matters of information to be given by superannuation providers to the Commissioner under respectively subsections 12(2), 12(3) and 12(6) of the Act. The information is set out respectively in Schedules 1, 2 and 3 of the Regulations and mainly consists of contact details, identification details and contributed amounts information.

Regulation 6 - Form of information to be given to the Commissioner

Regulation 6 allows the Commissioner to specify how information (other than information required by section 12 of the Act) is to be given to the Commissioner. Section 13 of the Act governs how information required by section 12 of the Act is to be given to the Commissioner. The flexibility permitted by regulation 6 will ensure the most efficient reporting systems are adopted in response to technological change and will facilitate the effective use of electronic commerce between superannuation providers and the Commissioner. It is envisaged that the use of electronic commerce will reduce compliance costs for superannuation providers.

Regulation 7 - Where information is to be given

Regulation 7 allows the Commissioner to specify where information is to be given to the Commissioner and is consistent with Income Tax Regulation 28.

Regulation 8 - How an address for service will be determined

Regulation 8 provides rules for determining a person's address for service and is consistent with Income Tax Regulation 38.

Regulation 9 - Last known place of business or residence

Regulation 9 provides that a person's address for service is taken to be the person's last known place of business or residence in Australia and is consistent with Income Tax Regulation 39.

Regulation 10 - Updating the Commissioner with a change or omission in information given to the Commissioner

Regulation 10 imposes an obligation on superannuation providers to update the Commissioner with any changes or omissions in information given to the Commissioner. The obligation applies in circumstances where the provider becomes aware of the change or omission unless the provider is reasonably satisfied that the change or omission will not affect an assessment. This qualification ensures that superannuation providers are not required to report insignificant changes or omissions (eg. the omission of a postcode for Sydney, NSW).

The notification of the change or omission must be made before the next reporting day after the superannuation provider became aware of the change or omission. However if the provider becomes aware of the change or omission less than 30 days before the next reporting day, the provider has until the reporting day after that reporting day to report the change or omission.

Superannuation providers may always report changes or omissions earlier than required.

A "reporting day" is defined by regulation 2 to mean, in 1998 - 15 February, 15 April and 15 July; and in 1999 and subsequent years - 15 January, 15 April and 15 July.

Regulation 11 - Giving a tax file number statement to the Commissioner

Regulation 11 imposes an obligation on superannuation providers to give the Commissioner a member's tax file number (together with information set out in Schedule 4 of the Regulations) if:

- the superannuation provider has given information to the Commissioner in connection with the Act or the Regulations in relation to the member;
- the member did not quote his or her tax file number to the provider in connection with the operation or possible future operation of the Act before the information was given; and
- the member later quotes the tax file number to the provider in connection with the operation or possible future operation of the Act.

The tax file number must be given before the next reporting day after the tax file number was quoted to the superannuation provider. However if the tax file number is quoted to the provider less than 30 days before the next reporting day, the provider has until the reporting day after that reporting day to give the tax file number to the Commissioner.

Superannuation providers may always give tax file numbers to the Commissioner earlier than required.

Regulation 12 - Commissioner may cause information to be marked or annotated

Regulation 12 authorises the Commissioner to mark or make annotations on any information given to the Commissioner and is consistent with income Tax Regulation 41.

Regulation 13 - Need to give information in the required form and manner

Regulation 13 contains a number of provisions related to when information requirements are taken to have been satisfied.

A person is not taken to have given information to the Commissioner until the Commissioner accepts the information. The Commissioner must accept the information if it:

- gives a complete and accurate statement of all the matters required by the Act and the Regulations, to the extent that information about those matters is known to the person; and
- is given in the form and manner required by the Act and the Regulations; and
- is signed or otherwise identified by the person giving the information as required by the Act or these Regulations.

The Commissioner may accept part information without in any way prejudicing the Commissioner's power to request the complete information.

Regulation 14 - Commissioner may request information

Regulation 14 allows the Commissioner to request any person to give information in connection with the operation or possible future operation of the Act and these Regulations.

Regulation 15 - Service of documents

Regulation 15 contains rules governing the service of documents and is consistent with Income Tax Regulation 170.

Regulation -16 - Presumption as to signatures

Regulation 16 provides that judicial notice must be taken of the names and signatures of current or former Commissioners, Second Commissioners, Deputy Commissioners and delegates of the Commissioner and that a document that bears the name of any such person is to be taken as signed by that person unless it is proved that the document was issued without authority. Regulation 16 is consistent with Income Tax Regulation 172.

Regulation 17 - Amounts of interest on surcharge debt accounts to be rounded down

Regulation 17 provides that if interest calculated for a member of a constitutionally protected superannuation fund under subsection 15(4) of the Act is an amount of whole dollars and an amount of cents, the amount of cents is to be disregarded.

Regulation 18 - Amounts remitted or refunded to be rounded up

Regulation 18 provides that if an amount of surcharge, interest or late payment penalty to be refunded or remitted under the Act is not a multiple of 5 cents, the amount is to be increased to the nearest multiple of 5 cents.

Regulation 19 - Expenses for persons attending before the Commissioner

Regulation 19 prescribes (as set out in Schedule 5 of the Regulations) a scale of expenses to be allowed to persons (other than persons giving information or answering questions in respect of

their own income or assessment or the income or assessment of persons whose representatives they are) required to attend under section 32 of the Act to give information or evidence to the Commissioner.

Regulation 19 is prescribed for the purposes of subsection 32(4) of the Act and is consistent with regulation 174 of the Income Tax Regulations.