

AUSTRALIA WIDE TAXATION & PAYROLL TRAINING

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A Newsletter to our clients . . . January, 2006.

SUPERANNUATION SPLITTING BILL PASSED

Individuals are now able to split certain superannuation contributions with their spouse. It also allows single income families access to two eligible termination payment (ETP) low rate thresholds and two reasonable benefit limits (RBL) in a similar way to dual income families.

Employees can split their contributions with their spouse (including a spouse in a de facto relationship). Superannuation contributions made on or after 1 January 2006 can be split if the employee is:

- a member of an accumulation style superannuation fund (a normal complying fund)
- an RSA holder; or
- a member of a defined benefit style superannuation fund where accumulation interest can be held.

It is not compulsory for superannuation funds and the like to offer the superannuation contribution splitting facility, however, it is expected that most superannuation funds will.

Which contributions can & can't be split?

Splittable contributions include both superannuation guarantee contributions and salary sacrifice contributions. These are referred to as taxed splittable contributions. Employee contributions (ie. contributions from the employees net salary) are also splittable but they are referred to as untaxed splittable contributions.

The limit to splitting is 85% of taxed splittable contributions and 100% of untaxed splittable contributions.

The following contributions are **not** splittable contributions:

- Amounts in the fund that have been rolled over, transferred or allotted;
- Lump sum payments from an eligible non-resident non-complying superannuation fund; and
- Employer ETPs and ETPs resulting from the small business retirement exemption (CGT exempt components of ETPs).

The spouse receiving the contributions is referred to as the receiving spouse. The superannuation received by a receiving spouse, as a result of a superannuation split, are regarded as rolled-over amounts. A receiving spouse must not yet have reached preservation age, or if over the preservation age, must not have retired. The preservation age is as follows:

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 - 30 June 1961	56
1 July 1961 - 30 June 1962	57
1 July 1962 - 30 June 1963	58
1 July 1963 - 30 June 1964	59
After 30 June 1964	60

Making an application to split

Eligible contributions made after 1 January 2006 can be split. The application to do so can be made once per annum in the financial year following the year in which the contributions were made, eg. employees who wish to split any contribution made between 1 January 2006 and 30 June 2006 must make the application on or after 1 July 2006 and no later than 30 June 2007.

The application can be made in the same financial year as the contributions in the case where the employee has decided to roll-over their superannuation to a new fund. Remember, rolled over amounts cannot be split, therefore, application to split such amounts should be made before changing to a new superannuation fund.

All applications to split superannuation contributions are made to the superannuation fund of the fund member who wishes to split his/her superannuation. The superannuation funds who offer the splitting facility will be able to provide the appropriate forms.

Taxpayers who are eligible to claim a tax deduction for their superannuation contributions should lodge their intention to claim the deduction with the trustee of the superannuation fund before the superannuation contributions-splitting application is lodged.

RELAXATION OF LAW WHERE DOUBLE SUPERANNUATION PAYMENTS ARE MADE, HAS NOW BEEN PASSED

Where employers have a shortfall for superannuation guarantee purposes, they are required to pay a superannuation guarantee charge penalty. The superannuation guarantee charge includes amongst other amounts, the total of the unpaid superannuation contributions. This remains the case even where the employer actually made the contributions voluntarily prior to the Tax Office's penalty being imposed. Consequently, the employer effectively pays contributions twice for an individual for a particular period. From 1 January 2006 the Tax Office will allow these voluntarily made late superannuation contributions to be used to offset the superannuation guarantee charge penalty if the contributions were made within a certain period.

Under the new law, if employers make a contribution to a superannuation fund which is late but before the due date for lodgment of the appropriate shortfall form (ie. *Superannuation guarantee quarterly statement* NAT 9599) the employer can elect to have this contribution used to reduce the amount of superannuation guarantee charge they have to pay.

This means that those employers will only be liable for the administration component and interest component of the superannuation guarantee charge. As under previous arrangements, those amounts applied against the superannuation guarantee charge to offset the late contribution will not be tax deductible.

In conjunction with these changes comes a new due date for lodgment of the shortfall form. This has been extended to the 28th day of the month after the cut-off date for payments to the superannuation fund.

This new lodgment due date is the last day employers are able to make a late payment to a fund and elect to have that late payment reduce their liability to the superannuation guarantee charge.

Superannuation Guarantee quarter	Due date for payment of Super Guarantee contributions	Due date for applying late contributions to SG charge when not paid by due date
1 July-30 Sept	28 October	28 November
1 Oct-31 Dec	28 January	28 February
1 Jan-31 Mar	28 April	28 May
1 Apr-30 June	28 July	28 August

Example – Allan (employer) pays \$2,000 superannuation guarantee amount into his employee's (Suzy) superannuation fund quarterly. For the quarter ending 31 December 2005, Allan paid contributions for Suzy to the fund on 24 February 2006 instead of by the due date of 28 January 2006. On this same day Allan completed the appropriate form (*Superannuation guarantee quarterly statement* NAT 9599) to advise the Tax Office of the shortfall and to elect to have the late payment applied to the superannuation guarantee charge. Because Allan paid the amount by 28 February 2006 and lodged the shortfall form by 28 February 2006 he was able to do so. If Allan had made the late payment after 28 February 2006 or lodged the appropriate form after 28 February 2006, he would not be able to offset his late payments against the superannuation guarantee charge.

The new law is effective from 1 January 2006 and applies to late payments made on or after 1 January 2006. Hence, employers will be able to have relief from double payment for the superannuation guarantee quarter two of 2005 (that is, 1 Oct– 31 Dec 2005).

GST & NON-GOODS/PROPERTY SUPPLIED TO NON-RESIDENTS

The Tax Office have released a ruling (GSTR 2005/6) clarifying the treatment of certain supplies of things (other than goods or real property) made to non-residents. Generally, these supplies are GST-free, however, they are not GST-free if:

- it is a supply made under an agreement entered into, whether directly or indirectly, with a non-resident, and
- the supply is provided, or the agreement requires it to be provided, to another entity in Australia.

GSTR 2005/6 also addresses apportionment issues relating to certain supplies of things made to non-residents, including apportionment when a supply is provided on a periodic or progressive basis. It also discusses certain subcontract and global supply arrangements surrounding such supplies.

TAX OFFICE TARGETS LEGAL PROFESSION & MOTOR VEHICLE TRANSACTIONS

The Tax Office has indicated that it will electronically match names and addresses from state and territory legal practitioner registers with certain sections of Tax Office data holdings. Records relating to approximately 41,000 individuals within the legal profession will be matched.

The Tax Office will also compulsorily acquire names, addresses and telephone numbers from Pickles Auctions Pty Ltd, Fowles Auction Group Pty Ltd and Auto Auction Group Pty Ltd. Records relating to approximately 5,000 individuals and entities who purchased or sold vehicles through these auction houses will be matched with Tax Office data holdings to determine whether taxation obligations have been met.

SCHOOLS – DEFERRAL OF LODGMENT OF THE DECEMBER MONTHLY ACTIVITY STATEMENT

The Tax Office has approved the deferral of the December 2005 monthly activity statement for all eligible schools and associated entities. The deferred due date for lodgment and payment of the December 2005 monthly activity statement for all schools and pre-schools will now be **21 February 2006**. Provided the December monthly activity statement is lodged and paid (if required) by **21 February 2006**, penalties will not be applied.

SEPTEMBER 2005 CPI

The Consumer Price Index (CPI) number for the September 2005 quarter is 149.8 (up from 148.4 for the June 2005 quarter).

Generally, the CPI number is relevant for concessional rebate and FBT repurchase of remote area residential property purposes.

SUPER CONTRIBUTIONS MADE VIA A CLEARING HOUSE

Contributions paid via a clearing house are not considered as having been made until the actual date when the complying fund or RSA receives the payment.

The only exception is where there is a formal agency contract between a clearing house and a superannuation fund and where the contributions made are for employees which are members of that super fund. If this occurs then the payments are considered to be made at the time they are made to the clearing house.

BILATERAL SUPER AGREEMENT NOW INCLUDES IRELAND

In a given contribution period, an employer is not required to provide Superannuation Guarantee support for employees sent to work temporarily in Australia (no more than 4 years) where a scheduled international social security agreement is in place that provides for superannuation exemption. Agreements are in place with the United States, Portugal, the Netherlands, Croatia, Chile, Belgium and from February 2006, Ireland. Employers should seek further confirmation of relevant countries from the Tax Office.

MEANING ON CHARITABLE INSTITUTION

Taxation Ruling TR 2005/21 has been released with the Tax Office's views on the meaning of "charitable institution" and "fund established for public charitable purposes" for income tax and FBT purposes.

For an institution or a fund to be considered charitable, it must be:

- beneficial to the community, or deemed to be for the public benefit by legislation applying for that purpose, and
- within the spirit and intendment of the preamble to the *Statute of Charitable Uses 1601 43 Eliz, c 4* (Statute of Elizabeth), or deemed to be charitable by legislation applying for that purpose.

The benefit of a charitable purpose need not be for the whole community; it is sufficient that it is for an appreciable section of the public. However, this public benefit requirement does not apply where the charitable purpose is the relief of poverty. Those who benefit from such a charity need not be a section of the public.

Charitable purposes are commonly grouped as:

- the relief of poverty
- the advancement of education
- the advancement of religion
- other purposes beneficial to the community.

The provision of child care services on a non-profit basis is deemed by legislation to be a charitable purpose.

Non-charitable purposes include:

- purposes to confer private benefits
- social, recreational and sporting purposes
- purposes that are illegal or against public policy
- political and lobbying purposes
- commercial purposes
- governmental purposes
- purposes that cannot be clearly identified or where the benefits have insufficient value for the community.

SUPER PAYABLE ON WAGES PAID TO FORMER EMPLOYEES

Where back payment of wages is made to a former employee after termination, there is a requirement for the employer to pay superannuation in relation to the amount paid.

This will apply when a payment is made in the quarter after which the employment relationship ceases.

PAYROLL TAX VICTORIA

The Victorian State Revenue Office has released ruling PT-120 to help employers determine whether wages paid (which exceed the general exemption level) are subject to Victorian Payroll Tax in terms of:

- the place where the wages are paid or payable; and
- the place where the services are performed.

Wages are deemed to be paid at the place of receipt by the employee.

The following table is an excerpt from the ruling showing all circumstances where there will be a liability for payroll tax in Victoria.

<i>Place where wages are paid or payable</i>	<i>Place where services are performed during the calendar month</i>
In Victoria	Wholly or partly in Victoria
In Victoria	In two or more states and/or Territories other than Victoria
In Victoria	Wholly in another country/s on an assignment of less than six continuous months
In Victoria	Wholly in another country/s during the first six months of an assignment which will last more than six continuous months
In Victoria	Partly interstate & partly in another country/s
In Victoria	Wholly or partly outside any State or Territory but not in another country
In another state and/or Territory	Wholly in Victoria
Outside Australia	More than 50 per cent performed in Victoria

In circumstances other than those shown in the previous table, the wages are not taxable in Victoria but may be taxable in another State or Territory.

Where an employee is working outside any State or Territory (as defined under the respective Payroll Tax legislation of the relevant State or Territory), but not in another country, the wages are taxable under the Act if they are paid in Victoria. Employees working on an oil rig would not be considered as working in another country.

Employees working in another country

Where services are performed by an employee in another country whose wages are paid in Victoria, the following points need to be considered:

- Wages are exempt only if the employee has worked in another country for a continuous period of more than six months (wages for the first six months will be taxable and any wages paid after the six-month period will not be subject to Payroll Tax);
- The six-month period does not have to be within the one financial year but must be a continuous period.

Where an employee, working in another country, returns to Australia in the following circumstances, it will not be considered to be a break in continuity;

- for a holiday;
- to perform work exclusively related to the overseas assignment for a period of less than one month;

and in either case, the employee immediately returns to that country to perform further work on the assignment.

INDUSTRIAL AWARD EARNINGS BASES CAN NOT BE USED FROM 1/7/2008 FOR CALCULATING SG

The superannuation guarantee legislation has been amended to simplify the earnings base of employees for superannuation guarantee purposes.

Employers using an industrial award earnings base to calculate superannuation contributions will be unable to do so from 1 July 2008. From this date those employers must commence using ordinary time earnings for all employees.

An employee's ordinary time earnings are earnings in respect of normal hours of work and must include overaward payments, commissions, shift allowances and paid leave. More specific information can be found in Section 5 of our Taxation Manual.

ROUNDING OF WITHHOLDING AMOUNTS

Amounts withheld from employee's wages/salary for PAYG withholding purposes should be rounded to the nearest dollar in the following way.

Values terminating in exactly 50 cents or above are rounded to the next higher dollar. Values terminating in 49 cents or less are rounded to the next lower dollar. This rounding should be done directly (that is, a preliminary rounding to the nearest cent should not be made). Where no TFN has been provided, cents are ignored when withholding amounts are calculated.

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SUPERANNUATION IMPLICATIONS FOR ARRANGEMENTS INVOLVING THREE OR MORE PARTIES

The Tax Office has released a ruling (SGR 2005/2) explaining their view on how the definitions of “employer” and “employee” apply to contractual and working arrangements involving three or more parties for superannuation purposes.

Such arrangements involve various relationships (whether contractual or otherwise) between the entity (ie end-user) requiring the services or work of an individual, an intermediary firm (eg service firms, labour hire firms and employment or recruitment agencies) and the individual performing the work or services.

As opposed to normal situations, relationships involving 3 or more parties often result in a number of contracts which can make it difficult to determine whether the worker is an employee of the intermediary or end-user, or neither.

Contracts

To establish whether a worker is an employee of the intermediary firm or end-user for super purposes, it is first necessary to determine whether:

- a contract (whether written, oral or implied) exists between the worker and the intermediary
- a contract (whether written, oral or implied) exists between the worker and end-user
- a contract exists between the intermediary and end-user.

Determining whether a contract exists is a matter of applying the ordinary principles of contract law (ie parties legally bound by the contract) there must be an offer by one party and acceptance by the other and the promises which constitute the agreement must be supported by consideration.

If it is found that there is no contract between the worker and end-user, the worker cannot be an employee of the end-user. Similarly, if it is found that there is no contract between the worker and the intermediary, the worker cannot be an employee of the intermediary.

In certain arrangements involving an intermediary firm, worker and end-user, the intermediary may perform an agency role to bring about a contractual relationship between the worker and end-user. If an agency relationship does exist between the intermediary and either the end-user or worker, and the intermediary merely brings about a contractual relationship between the end-user and worker, the worker is not an employee of the intermediary firm as it is not a party to the contract. Instead the worker is an employee of the end-user as the contract is between the worker and the end-user.

If a worker is not contracted personally to perform work or services, but via an interposed entity such as a company or trust, neither the end-user nor the intermediary is the employer of the worker, because any contract they have is with the interposed entity and not with the worker.

Control of one party over another cannot infer the existence of a contract. If there is no contract between the end-user and worker, there cannot be an employment relationship and the fact that the worker performs the work for the end-user at their premises and under the end-user’s direction and control will not affect this conclusion. It is the ultimate or legal control over the worker that is most relevant, not the day-to-day direction and control.

REDESIGN OF REASONABLE BENEFIT LIMITS (RBL) PAPER REPORTING FORMS

Employers and superannuation funds use the *Reasonable benefit limits (RBLs) new or amended benefit reporting* (NAT 2933) forms to report retirement and termination of employment benefits to the Tax Office for RBL purposes. The form and the instructions have been redesigned. The new RBL paper reporting forms and instructions are now available. Employers may continue to use stocks of the existing form for benefits paid up to 30 June 2006 (and reported by 14 July 2006). Benefits paid from 1 July 2006 (and reported by 14 August 2006) must be reported using the new form. For clients who report electronically, no changes have been made to the electronic lodgment form.

The form and instruction guide have been split into two parts for use by:

- employers, individuals, sole traders or partners, and
- superannuation funds, life insurance companies, approved deposit funds, retirement saving account providers, and trustees of self managed superannuation funds.

The other major changes include:

- instruction guides have been made much more comprehensive
- some new questions have been added to the forms while others have moved position or been reworded
- only those eligible termination payment components relevant to the form type are included on the form, and
- extra navigational aids and instructions have been added to the forms to make them easier to use.

UPCOMING ONE DAY TAXATION & PAYROLL SEMINARS

DATE	CITY/TOWN/SUBURB	STATE	VENUE
01-02-2006	Frankston	VIC	Frankston International
02-02-2006	Glen Waverley	VIC	Novotel Glen Waverley
03-02-2006	Glen Waverley	VIC	Novotel Glen Waverley
06-02-2006	Melbourne	VIC	Mercure Hotel
07-02-2006	Melbourne	VIC	Mercure Hotel
08-02-2006	Traralgon	VIC	Latrobe Hotel & Convention Centre
10-02-2006	Warrnambool	VIC	Sundowner Warrnambool
13-02-2006	Albury	NSW	Sundowner Albury Hovell Tree Inn
22-02-2006	Sydney	NSW	Mercure Hotel
23-02-2006	Sydney	NSW	Mercure Hotel
24-02-2006	Sydney	NSW	Mercure Hotel
27-02-2006	Manly	NSW	Novotel Manly Pacific
28-02-2006	Wollongong	NSW	Novotel Northbeach
02-03-2006	Canberra	ACT	Chifley on Northbourne
03-03-2006	Canberra	ACT	Chifley on Northbourne
07-03-2006	Newcastle	NSW	Crowne Plaza Hotel
08-03-2006	Newcastle	NSW	Crowne Plaza Hotel
10-03-2006	Port Macquarie	NSW	Rydges Port Macquarie
13-03-2006	Tamworth	NSW	Quality Hotel Powerhouse
15-03-2006	Coffs Harbour	NSW	Novotel Opal Cove Resort
27-03-2006	Brisbane	QLD	Armstrongs at the Inchcolm Hotel
29-03-2006	Northgate	QLD	Comfort Inn & Suites
03-04-2006	Fremantle	WA	The Tradewinds Hotel
05-04-2006	Perth	WA	Hyatt Regency Hotel
06-04-2006	Perth	WA	Hyatt Regency Hotel
07-04-2006	Perth	WA	Hyatt Regency Hotel
10-04-2006	Darwin	NT	Crowne Plaza Hotel
12-04-2006	Alice Springs	NT	Alice Springs Resort
28-04-2006	Moree	NSW	Spa Village Travel Inn
01-05-2006	Dubbo	NSW	Mainstay Motor Lodge
03-05-2006	Orange	NSW	Country Comfort Hotel
05-05-2006	Parramatta	NSW	Crowne Plaza Hotel
08-05-2006	Parramatta	NSW	Crowne Plaza Hotel
09-05-2006	Windsor	NSW	The Sebel Resort
11-05-2006	Sydney	NSW	The Menzies Hotel
12-05-2006	Sydney	NSW	The Menzies Hotel
22-05-2006	Adelaide	SA	Holiday Inn on Hindley
23-05-2006	Adelaide	SA	Holiday Inn on Hindley
25-05-2006	Melbourne	VIC	Novotel Melbourne on Collins
26-05-2006	Melbourne	VIC	Novotel Melbourne on Collins
29-05-2006	Launceston	TAS	Hotel Grand Chancellor
31-05-2006	Hobart	TAS	Hadleys Hotel
01-06-2006	Brisbane	QLD	Hilton Hotel
02-06-2006	Brisbane	QLD	Hilton Hotel
05-06-2006	Springwood	QLD	Springwood Towers
06-06-2006	Gold Coast	QLD	Crowne Plaza Hotel
07-06-2006	Ballina	QLD	Ballina Beach Resort
19-06-2006	Cairns	QLD	Cairns International Hotel
21-06-2006	Townsville	QLD	Jupiters Hotel
23-06-2006	Mackay	QLD	Ocean International Resort
26-06-2006	Rockhampton	QLD	Country Comfort Hotel

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