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THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION GUARANTEE
(ADMINISTRATION) BILL 1992

SUPPLEMENTARY
EXPLANATORY MEMORANDUM

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

General Outline and Financial Impact of the Amendments

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

exempt from income tax the "shortfall component" of the superannuation guarantee charge when paid by the Commissioner of Taxation to an employee under 55 years of age who has retired from the workforce due to illness or the legal personal representative of an employee who has died;

in the 1993-94 year and subsequent years, allow contributions made to a complying superannuation fund prior to a contribution period (ie any of the 12 months of the year) to be treated as relating to that (later) contribution period;

ensure that an employer does not have to provide superannuation support for certain prescribed employees. Broadly these prescribed employees are to be foreign executives who are holders of Class 2 temporary entry permits (code number 413) in terms of Schedule 3 of the Migration Regulations;

amend the definition of "ordinary times earnings" to ensure that if an employee's ordinary times earnings for a contribution period exceeds the maximum contribution base as set out in clause 15 (ie. \$80,000 for the 1992-93 contribution period) then the employee's ordinary times earnings will be taken to be equal to that maximum contribution base;

include a reference to a complying superannuation fund in subclause 23(6);

ensure that salary and wages paid *on behalf of* an employer are taken into account in the calculation of an employer's individual superannuation guarantee shortfall component;

clarify some of the terms or definitions contained in clause 6 of the Bill.

The amendments will have no significant impact on the revenue.

Explanation of proposed amendments

Exempt income

Where an employee under 55 years of age retires from the workforce due to illness, or an employee dies, the Commissioner of Taxation is required to pay out the "shortfall component" of the superannuation guarantee charge to the employee, or the legal personal representative of the deceased employee, pursuant to clauses 61 or 62 of the Superannuation Guarantee (Administration) Bill 1992.

The proposed amendment provides that such payments made by the Commissioner to the employee or the deceased employee's legal personal representative are exempt from income tax.

Contributions made prior to the contribution period

An employer's level of superannuation support will be measured on an annual basis for the 1992-93 year and on a monthly basis for subsequent years. Existing subclause 23(7) provides that for the 1993-94 year and subsequent years superannuation contributions made within 28 days of the end of the month may be treated as relating to the original month.

Although the Bill provides for contributions *after* a period to be taken into account for the earlier period, it does not allow the reverse situation, ie. payments made prior to a contribution period are not able to be taken into account in that (subsequent) contribution period. This means that if an employer makes superannuation contributions in advance, for example, the employer pays annually on 1 July in respect of the financial year commencing on that date, the employer would not satisfy the superannuation guarantee charge compliance for any month other than July, even though the total contributions paid equal the total contributions required for all the months of the year when combined.

The amendment now proposed will overcome this problem by allowing contributions paid prior to a particular month to be taken into account for that month. These prepayments may be made up to 12 months in advance. That is, the amendment will allow payments made in one month to be taken into account for that month or any of the following 12 months.

New subclause 23(8) (which replaces the former subclause 23(8)) ensures that if contributions made to a complying superannuation fund before or after a particular contribution period are treated as relating to that period, they cannot be treated as contributions for any other period (eg. the period in which they are paid); this ensures double counting does not occur.

Foreign executives

Under the existing provisions of the Bill, an employer will not have to provide superannuation support in a contribution period for certain employees in the circumstances outlined below.

1. An employer will not have to provide superannuation support for an employee once the employee reaches 65 years of age.

[Paragraph 24(1)(a)]

2. Non-residents, employed by resident or non-resident employers, where the salary and wages paid to the employee is for work done outside Australia. *[Paragraph 24(1)(b)]*

3. Residents employed by a non-resident employer where the salary and wages paid to the employee is for work done outside Australia. *[Paragraph 24(1)(c)]*

A resident for the purposes of 2 and 3 above is a resident for income tax purposes. *[Clause 8]*

4. An employer will not have to provide superannuation support for an employee in any month where the employee receives salary and wages of less than \$250. *[Subclause 24(2)]*

5. Salary and wages earned by an employee who is under 18 years of age and is employed part-time will not be included in determining if an employer has an individual superannuation guarantee shortfall in respect of the employee. *[Clause 25]*

A part-time employee is a person who does not work more than 30 hours per week. *[Subclause 6(1)]*

6. Salary and wages paid to a person in his or her capacity as a Member of the Defence Force Reserves (other than salary and wages in respect of continuous full-time service) will not be

included for purposes of determining whether superannuation support should be provided. [*Clause 26*]

The Government has decided to provide an additional exclusion from the superannuation guarantee charge in respect of salary or wages paid to a "prescribed employee". A prescribed employee is to be defined in the regulations to cover a foreign executive who holds a Class 2 temporary entry permit to Australia; code 413 in terms of Schedule 3 of the Migration Regulations. Employers will not have to provide superannuation support for an employee in this category.

"Ordinary times earnings"

The definition of "ordinary times earnings" in clause 6 of the Bill will be amended to ensure that if an employee's ordinary times earnings for a contribution period exceeds the maximum contribution base as set out in clause 15 (ie. \$80,000 for the 1992-93 contribution period) the employee's ordinary times earnings for that contribution period will be taken to be equal to that maximum contribution base.

Complying superannuation funds

Subclause 23(6) of the Superannuation Guarantee (Administration) Bill allows an employer to treat contributions made between 1 July 1993 and 14 August 1993 (inclusive) to a superannuation fund for the benefit of an employee as relating to the 1992-93 year. Similarly, subclause 23(7) ensures that for the 1993-94 and subsequent years, contributions made within 28 days of the end of a month may be treated as relating to the original month. If contributions made after a contribution period are treated as relating to a prior period, subclause 23(8) as amended (see above) ensures that they are not also treated as contributions for the period in which they are paid.

In each of the above provisions the contributions concerned should be only those paid to a *complying* superannuation fund by an employer for the benefit of an employee. However, in the Bill introduced into Parliament on 2 April 1992, only subclause 23(7) contained a reference to a complying superannuation fund; subclause 23(6) did not. To avoid any confusion on this point, this subclause will be amended to include a reference to complying superannuation funds.

Calculation of Individual Superannuation Guarantee Shortfall

Once an employer has determined the expected percentage level of superannuation support for an employee (see clauses 20 and 21 of the Bill) and the actual percentage level of superannuation support for the employee (see clauses 22 and 23) the employer must ascertain the shortfall (if any) arising. The employer's individual superannuation guarantee shortfall in respect of an employee is calculated in accordance with clauses 18 and 19. This is calculated by multiplying the total salary and wages paid by the employer to the employee by the charge percentage remaining after deducting any reductions for actual superannuation support provided.

The formula in clauses 18 and 19 only takes into account salary and wages paid *by* the employer. This means that salary and wages paid by another person on behalf of the employer may not fall within the formula. The amendment proposed will ensure that where a person pays an employee's salary and wages on behalf of the employer, those salary and wages are to be taken into account in the calculations under clauses 18 and 19. This will be achieved by an amendment in the definition provisions of clause 6 providing that a reference to salary and wages paid by an employer includes salary and wages paid on behalf of the employer.

Minor technical amendments

Some minor technical changes will be made to the Bill in order to clarify the meaning of certain terms used in the Bill. In particular, the definitions of "defined benefit superannuation scheme", "public sector scheme" and "superannuation scheme" in clause 6 will be amended.

A minor consequential amendment is also made to subclauses 13(3) and 14(4) to clarify the operation of those subsections.

Commencement date

As these are amendments to the Superannuation Guarantee (Administration) Bill 1992 they will also apply from 1 July 1992.



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