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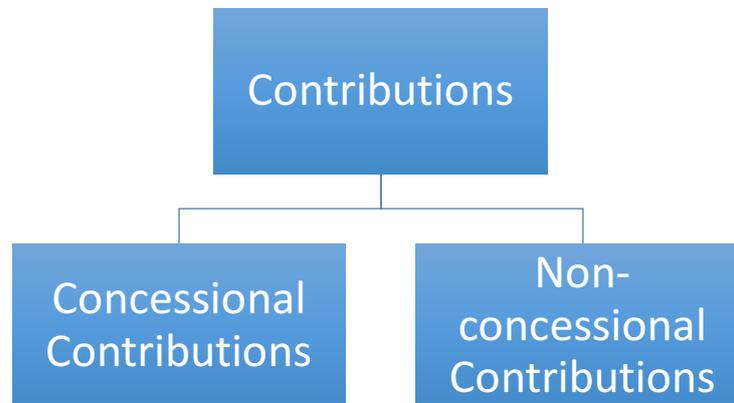
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## Topic 3: Superannuation contributions

### Two Types of Contributions:



### Concessional Contributions

Concessional contributions are made by any of the following methods.

#### **By Employer**

- 1) The Superannuation Guarantee Contribution that employers must pay to employees superannuation accounts.
  - a. This is currently set at 9.5% of the employee's pay.
- 2) Any additional amount that an employer chooses to pay
  - a. Any amount the employer pays into the employee's account on top of the guaranteed 9.5% is also concessional.
- 3) "Salary Sacrifice"
  - a. Any amount that an employee agrees to have salary sacrificed into their super account.

### Non-concessional Contributions

Lack some of the tax advantages of concessional contributions

Non-concessional contributions are usually those that are any of the following:

- 1) Made by the employee or self-employed person out of their own money.
  - a. E.g. out of their after tax salary or their capital/savings and have NOT elected for such contributions to be concessional contributions.
- 2) Contributions that a taxpayer makes into their spouse's superannuation account.

Non-concessional contributions are not taxed because they tend to come from after tax money.

## Superannuation Guarantee

*Superannuation Guarantee (Administration) Act 1992.*

- A system of guaranteeing that employees receive a minimum amount of superannuation.

### **Rule:**

- Employers are generally required to make contributions for workers who are defined as “employees” (see below).
- Exceptions
  - o Employees under 18 years and working less than 30 hours a month; and
  - o Employees receiving salary or wages of less than \$450 in a month.

### **How it works**

- Employer must pay the guaranteed 9.5% of the worker’s salary into the employee’s superannuation account.
- The employer’s contributions made for the benefit of an employee are tax deductible.
- If an employer has less than 20 employees, he can utilize the **small business superannuation clearing house**. Basically, he gives the amount to clearing house who then puts the money into the employee’s individual super account.

### **Consequences of failing to pay**

- If the employer fails to pay they are liable to:
  - o Pay a non-deductible *Superannuation Guarantee Charge* to the ATO: **ITAA97 s26-95**;
  - o Pay a penalty;
  - o Pay interest.

### **Specific Legislation**

#### **Section 16 SGAA:**

- An employer’s superannuation guarantee shortfall for a quarter is payable by the employer.

#### **Section 17 SGAA** → what is the superannuation guarantee shortfall?

- Individual superannuation guarantee shortfalls + interest + administration penalty.

#### **Section 19 SGAA** → how to calculate shortfalls

- Basically a percentage of the salary or wages paid to an employee
- BUT...
- Section 23(2) reduces the shortfall amount by the amount the employer has contributed to an employee’s super fund. I.e. contributed amount won’t be part of the shortfall.

In determining if a contract is “wholly or principally” for labour, if the contract under which a person works does not specify the value of the labour component, market value and industry practice are used to allocate the value of the labour component.

<b>World Book</b> → Situations where a person is paid for a result	
Facts:	<ul style="list-style-type: none"> <li>- Agents had a contract to sell encyclopedias.</li> <li>- Paid for commission for sale.</li> <li>- Under the terms of the contract, they could do so themselves or delegate the task.</li> </ul>
Held:	<ul style="list-style-type: none"> <li>- Because the agents were paid for a result &amp; could delegate were not:               <ul style="list-style-type: none"> <li>o Employees; or</li> <li>o Being paid ‘wholly or principally for the labour’.</li> <li>o NOTE: does not work the other way around – just because can’t delegate, doesn’t automatically mean that payment is wholly or principally for the labour of someone – e.g. lawyer or surgeon.</li> </ul> </li> </ul>

The court in **Vabu Pty Ltd v Federal Commissioner of Taxation** agreed with the approach in **World Book** when considering the Superannuation Guarantee – if paid for a result, then would not come under s12(3).

### Summary

A contract will be principally/wholly for labour (and so WILL come under s12(3)) when:

- **A person is paid wholly/principally for their personal labour/skills:**
  - o The word principally means mostly.
  - o This means that if paid mostly for use of capital, this will not be satisfied. E.g. tow truck driver paid \$80 an hour, being paid mostly for the use of their tow truck rather than labour.
  - o On the other hand, pay a plumber \$100 for an hour’s work and he supplies a washer, mostly paying for their labour, parts are incidental.

AND

- **The individual must perform the services personally:**
  - o This is the delegation issue, i.e. don’t delegate.

AND

- **The individual not paid to achieve a result.**

Being paid to achieve a result, e.g. paid to write a book, or build a boat (with the

However, if had reasonable grounds to believe that NOT a ‘regulated super fund’ OR that was contravening a ‘regulatory provision’ (usually of SISA act) then cannot rely on last 2 options.

## 2. Voluntary contributions that are entitled to deductions

**Section 290-150 ITAA 97** – says can deduct contributions to own super account and claim deduction, but only if fulfil conditions:

- Must be a complying superannuation fund ([section 290-155](#))
- Certain age limits:
  - o 28 days after last month that turn 75 – cannot get deduction for such contributions ([section 290-165](#))
- Must serve notice to super fund under [section 290-170](#).

When concessional contributions are placed into a superannuation fund they are assessable income of the superannuation fund and these contributions are taxed at the rate of 15%.

As of 1 July 2017 people earning 250k+ have to pay an extra 15% in their own hands (Division 293 ITAA 97) – *in effect their super contributions are taxed at 30% (15% in hands of super fund + 15% in taxpayer’s hands)*.

It should be noted that “salary sacrifice” is a **good way** to save tax on money that is salary sacrificed into superannuation, as it will effectively be taxed at 15% rather than the employee’s marginal tax rate. Making your own concessional contributions gives the same result.

### **EXAMPLE:**

Cindy is on a salary of \$100,000, which means that her marginal tax rate is 39% (including Medicare levy). She agrees with her employer to salary sacrifice \$10,000 into her superannuation account.

This means that Cindy no longer has to pay 39% tax on the \$10,000 that has been salary sacrificed. Instead, the superannuation fund will pay tax on it at 15% because it is a concessional contribution.

Which means that whereas if that \$10,000 would have been received by Cindy as a salary she would have kept \$6,100 of it (\$10,000 – 39%), now that it has been salary sacrificed, her superannuation fund has \$8,500 of it (\$10,000 less the 15% tax it pays upon receiving a concessional contribution).

Downside is that she can’t access it till preservation age.