Table of Contents

TOPIC 4: Complying Superannuation Fund

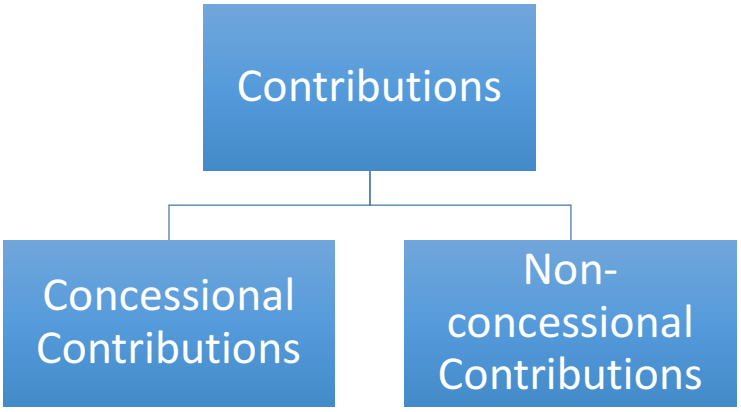
TOPIC 5: Taxation of Superannuation

Topic 6: Running a Superannuation Fund

Topic 7: Self Managed Super Funds

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
  - Employees under 18 years and working less than 30 hours a month; and
  - 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:
  - Pay a non-deductible *Superannuation Guarantee Charge* to the ATO: ITAA97 s26-95;
  - Pay a penalty;
  - 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.

World Book → Situations where a person is paid for a result	
Facts:	- Agents had a contract to sell encyclopedias. - Paid for commission for sale. - Under the terms of the contract, they could do so themselves or delegate the task.
Held:	- Because the agents were paid for a result & could delegate were not: o Employees; or o Being paid 'wholly or principally for the labour'. 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.

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:**
  - The word principally means mostly.
  - 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.
  - 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:**
  - 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:
  - 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.