

Superannuation Contributions Tax (Assessment and Collection) Regulations (Amendment) 1997 No. 370

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 370

issued by the Authority of the Assistant Treasurer

Superannuation Contributions Tax (Assessment and Collection) Act 1997

Superannuation Contributions Tax (Assessment and Collection) Regulations (Amendment)

The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* ('the Act') provides for the assessment and collection of the superannuation contributions surcharge. Section 42 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 matters for the purposes of new provisions inserted into the Act by the *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1997* (the amending Act) to assist the assessment and collection of the superannuation contributions surcharge payable on the surchargeable superannuation contributions of high income earners.

The regulations..

- * ensure that a member's "allocated surplus amount" which is required to be reported to the Commissioner of Taxation ('the Commissioner') under a new provision inserted into the Act by item 20 of Schedule 4 of the amending Act, is reported to the Commissioner as an 'employercontributed amount' (subregulations 2.1 and 2.2);
- * prescribe various matters of information to be given by superannuation providers under new provisions inserted into the Act by items 11, 14, 15 and 16 of Schedule 4 of the amending Act (regulations 3 and 5); and
- * make a drafting improvement (regulation 4).

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

ATTACHMENT

Superannuation Contributions Tax (Assessment and Collection) Regulations (Amendment)

COMMENCEMENT OF THE REGULATIONS

The Superannuation Contributions Tax (Assessment and Collection) Regulations (Amendment) ('the Regulations') commence on gazettal.

EXPLANATION OF THE REGULATIONS

Regulation 1 - Citation

Regulation 1 provides that the Superannuation Contributions Tax (Assessment and Collection) Regulations ('the Principal Regulations') are amended as set out in these Regulations.

Regulation 2 - Interpretation

Subregulations 2.1 and 2.2. amend Regulation 2 of the Principal Regulations to include within the terms "direct employer-contributed amount" and "roll-in employer-contributed amount" a member's "allocated surplus amount". A member's "allocated surplus amount" was made surchargeable by item 6 of Schedule 4 of the amending Act and reportable under subparagraph 13(7)(a)(iii) of the Act to the Commissioner by item 20 of Schedule 4 of the amending Act. The term "allocated surplus amount" is defined in section 43 of the Act.

Superannuation providers are currently required under regulation 3 of the Principal Regulations to give the Commissioner details of a member's "direct employer-contributed amount" and "roll-in employer-contributed amount". In addition, these Regulations will also require superannuation providers to give details of those amounts in the circumstances set out in new regulations 3A, 3B, 3D (which are to be inserted into the Principal Regulations by these Regulations).

Accordingly, the amendment made by subregulations 2.1 and 2.2 of these Regulations will have the effect of requiring superannuation providers to include a member's "allocated surplus amount" within the member's "direct employer-contributed amount" and "roll-in employer-contributed amount" (whichever is applicable) when reporting those amounts under regulations 3, 3A, 3B and 3D of the Principal Regulations.

Subregulation 2.3 of these Regulations contains definitions of terms used in the Regulations and are self-explanatory.

Regulation 3 - Information requirements under subsections 13(3), 13(4), 13(4A) and section 35 of the Act

Regulation 3 inserts new regulations 3A, 3B, 3C, 3D and 3E into the Principal Regulations to prescribe matters of information to be given by superannuation providers under various provisions of the Act inserted by the amending Act. The information mainly consists of contact details, identification details and contributed amounts information.

New regulation 3A

New regulation 3A prescribes additional matters of information to be given by superannuation providers to the Commissioner under paragraph 13(3)(d) and subparagraph 13(4)(a)(iii) of the Act. These additional matters are set out in Schedule 1A of the Regulations. In the case of information to be given under subparagraph 13(4)(a)(iii) of the Act, the information only has to be reported to the Commissioner if it is readily accessible to the provider,

Paragraph 13(3)(d) of the Act requires that superannuation providers give prescribed information to the Commissioner in respect of the payment of contributed amounts to a member and subparagraph 13(4)(a)(iii) requires that superannuation providers give prescribed information to the Commissioner in respect of the transfer of contributed amounts of a member to another superannuation provider in the 1996-97 and 1997-98 financial years.

New regulation 3A ensures that superannuation providers provide the Commissioner with sufficient information for the Commissioner to issue correct surcharge assessments and determinations of advance instalments.

New regulation 3B

New regulation 3B prescribes additional matters of information to be given by superannuation providers to the Commissioner under paragraph 13(4)(b) of the Act. These additional matters are set out in Schedule 1B of the Regulations.

Subsection 13(4)(b) of the Act requires a superannuation provider ('the transferring provider') that transfers any contributed amounts of a member to another superannuation provider ('the receiving provider') in the 1998-99 and subsequent financial years to give to the receiving provider a statement setting out the particulars referred to in subsection 13(7) of the Act and any matters required by the regulations.

New regulation 3B ensures that the receiving provider has sufficient information to report surcharge details to the Commissioner.

New regulation 3C

New regulation 3C prescribes matters of information under subsection 13(4A) of the Act to be given by the receiving provider to the transferring provider if the transferring provider has requested that the receiving provider give the information. The matters of information are set out in Schedule 1B of the Regulations and must be given only if they are known to the receiving provider.

To ensure that the receiving provider has sufficient time to provide the information before the required time set out in subsection 13(4A) of the Act, the request by the transferring provider must be made within the following time limits:

- in the case where the transfer occurs in the 1996-97 or 1997-98 financial years, the request must be not later than 7 days before the notification date for the financial year; and
- in the case where the transfer occurs in the 1998-99 and subsequent financial years, the request must be within 7 days of the transfer.

New regulation 3C ensures that the transferring provider has sufficient information to report details in respect of the destination of the transfer, to the Commissioner.

New regulation 3C only applies if the transferring provider requests the particular information.

New regulations 3D and 3E

New regulations 3D and 3E prescribe matters of information to be given by superannuation providers to the Commissioner under section 35 of the Act. Section 35 applies when a superannuation provider has paid a surcharge assessment or a determination of an advance instalment for a member. The matters of information required to be given are set out in Schedules 1D and 1E respectively of the Regulations.

New regulation 3D requires superannuation providers to inform the Commissioner within a period notified by the Commissioner of details associated with members for whom a surcharge

assessment or a determination of an advance instalment has been received and for whom the provider is not satisfying the assessment or determination (eg. where the provider has transferred the member to another superannuation provider and is not required to pay the assessment or determination).

New regulation 3E requires superannuation (unfunded defined benefits) providers to inform the Commissioner within a period notified by the Commissioner of details of the amount of surcharge paid in respect of a member, the interest in respect of the surcharge paid and the total amount paid for the member. New regulation 3E does not apply to the payment of advance instalments as advance instalments are not payable by superannuation (unfunded defined benefits) providers (subsection 12(3) of the Act).

Regulation 4 - Form of information to be given to the Commissioner

Regulation 4 amends regulation 4 of the Principal Regulations to make a drafting improvement and has no substantive effect.

Regulation 5 - New Schedules IA, 1B, 1C, ID and IE

Regulation 5 inserts new Schedules into the Principal Regulations to prescribe items of information for the purposes of new regulations 3A, 3B, 3C, 3D and 3E inserted into the Principal Regulations by Regulation 3 of these Regulations.