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Superannuation Guarantee Charge Amendment
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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 160 2001–02

Superannuation Guarantee Charge Amendment Bill 2002

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5 June 2002

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Superannuation Guarantee Charge Amendment Bill 2002

Date Introduced: 16 May 2002

House: House of Representatives

Portfolio: Treasury

Commencement: The later of 1 July 2003 and the date on which the Act receives the Royal Assent.

Purpose

To amend the *Superannuation Guarantee Charge Act 1992* to enable the Superannuation Guarantee Charge to be imposed on a quarterly basis.

Background

The Superannuation Guarantee (SG) Scheme, administered by the Australian Taxation Office (ATO), requires all employers to provide a prescribed minimum level of superannuation support for each of their employees, subject to limited exemptions. Employers who fail to provide the prescribed level of minimum support are liable to a SG Charge equivalent to the amount of the superannuation not contributed (the 'shortfall') plus an interest component and an administrative charge. Employer contributions to a complying superannuation fund (or retirement savings account) for the benefit of employees are generally tax deductible, but the SG Charge is not.

The legislation governing the SG Scheme is the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Act 1992*. Both Acts commenced operation on 1 July 1992.

The required minimum level of superannuation support commenced in 1992 at 3 per cent of the employee's earnings. Over the last 10 years, this rate has increased towards its legislated maximum. The required minimum level of superannuation support for 2001-02 is 8 per cent of the employee's earnings. This will increase to 9 per cent from 1 July 2002 and subsequent years.

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The level of superannuation support that an employer provides in respect of each employee is measured on a quarterly contribution period basis, however, SG contributions only have to be made annually. To avoid incurring a SG liability, the required SG contributions must be made by 28 July in respect of the SG liabilities that have accrued over the previous financial year. This means that an employer must calculate its quarterly SG liability for every quarter year commencing 1 July, 1 October, 1 January or 1 April. The contributions do not have to be paid to a superannuation fund until the following 28 July in respect of the liabilities for the four quarters.

The scheme is administered on a self-assessment basis. Generally, an employer who has a SG shortfall is required to lodge a SG statement with the ATO together with payment of the SG Charge by 14 August after the end of the financial year. Employers are required to maintain adequate records to demonstrate their compliance with the requirements of the scheme.

Constitutional basis of the SG Scheme

Section 55 of the Constitution provides that an Act which imposes liability to pay a tax shall deal only with the imposition of the tax and any provision in that Act dealing with any other matter shall be of no effect.

The SG Scheme is implemented by the following two statutes under the taxation power in section 51(ii) of the Constitution:

- the *Superannuation Guarantee Charge Act 1992*, which imposes a SG Charge on any SG shortfall of an employer in a year, and
- the *Superannuation Guarantee (Administration) Act 1992*, which provides the legislative framework for the assessment and payment of the SG Charge.

The *Superannuation Guarantee Charge Act 1992* incorporates, and is to be read as one with, the *Superannuation Guarantee (Administration) Act 1992*.

Basis of policy commitment

Report of the Senate Select Committee on Superannuation and Financial Services, *Enforcement of the Superannuation Guarantee Charge*

On 27 April 2001, the Senate Select Committee on Superannuation and Financial Services released its report titled *Enforcement of the Superannuation Guarantee Charge*.¹ Chapter 4 of the Committee's report examined the issues involved with the frequency and timeliness of SG contributions. The Committee heard that the SG requirement for annual payment caused a number of problems including:

- potential loss of investment earnings for employees

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- potential loss of entitlements in the event of insolvency
- increased number of lost members
- impact on disability and income protection insurance
- less frequent contributions by employers can commercially disadvantage employers that make on time and correct SG contributions.²

The Committee also:

- received considerable support from superannuation industry stakeholders for more frequent payment of SG contributions
- noted that a Private Member's Bill had been introduced to require quarterly SG contributions, and
- noted that the then Assistant Treasurer and officers of the Australian Taxation Office and the Department of the Treasury were examining the feasibility of introducing quarterly SG contributions.

The Committee reported evidence received from the ATO that 86 per cent of employers pay SG contributions quarterly, or more frequently. The Committee also considered a range of options for more frequent payment, including monthly and quarterly payment. After considering the range of issues, the Committee made the following recommendation:

Recommendation 7

4.24. The Committee recommends that the requirement for compulsory SG contributions by employers, where it is not currently monthly, be varied to provide for quarterly payments.³

2001 Election: Coalition Promises on Superannuation

During the 2001 election campaign, the Government released a paper titled *A Better Superannuation System*. This paper contained the following proposal to introduce quarterly SG contributions:

Quarterly Superannuation Contributions by Employers

Australians can be confident that the vast majority of businesses comply with their superannuation obligations. Approximately 85% of businesses currently make superannuation contributions quarterly or more often, whilst others make superannuation contributions annually.

In order to ensure fairness between employees and to encourage employers to make regular superannuation contributions, the coalition will require all employers to make at least quarterly superannuation contributions on behalf of their employees.

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The measure will take effect from 1 July 2003.⁴

2002-03 Budget Announcement

The 2002-03 Budget provided further details about the implementation of this proposal. The relevant extract from the Budget follows.

A Better Superannuation System — quarterly Superannuation Guarantee contributions

Revenue (\$m)

	2002-03	2003-04	2004-05	2005-06
Australian Taxation Office	-	35.0	5.0	6.0

Explanation

From 1 July 2003, employers will be required to make Superannuation Guarantee (SG) contributions to a complying superannuation fund or retirement savings account on behalf of their eligible employees on at least a quarterly basis. Currently, employers are only required to make SG contributions on an annual basis, although most employers make contributions more frequently than this.

As part of a quarterly SG regime, the following will also apply:

- for defaulting employers, the Superannuation Guarantee Charge (SGC) will be imposed quarterly with a lower administration component and the nominal interest component calculated from the beginning of the relevant quarter;
- the earnings threshold that determines whether an employee is entitled to SG will change from \$450 per month to \$1,350 per quarter;
- employers will be required to report to their employees the amount and destination of SG contributions when contributions are made; and
- in order to assist employers make the transition to quarterly payments, no administration or nominal interest components of the SGC will apply to shortfalls arising within the first two quarters from 1 July 2003.⁵

As part of the 2002-03 Budget announcement, the Minister for Revenue and Assistant Treasurer, Senator the Hon. Helen Coonan justified changing the earnings threshold that determines whether an employee is entitled to SG will change from \$450 per month to \$1350 per quarter in the following terms:

The quarterly threshold should reduce the compliance impact on business, particularly those with seasonal or casual workers (e.g. rural and retail sectors).⁶

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The earnings threshold is amended by the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002. For a discussion of the proposed amendment to the SG earnings threshold and other related issues announced in the 2002-03 Budget, interested readers are referred to the Bills Digest for Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002.

Comments on proposed changes

Interest groups

The Association of Superannuation Funds of Australia welcomed the move to require employers to make more regular quarterly payments of super contributions.⁷

ALP policy position

The ALP members of the Senate Select Committee on Superannuation and Financial Services supported the recommendations in the report *Enforcement of the Superannuation Guarantee Charge*, including the recommendation to introduce quarterly SG contributions.

Australian Democrats policy position

The Australian Democrats member of the Senate Select Committee on Superannuation and Financial Services supported the recommendations in the report *Enforcement of the Superannuation Guarantee Charge*, including the recommendation to introduce quarterly SG contributions.

Separate Acts to comply with section 55 of the Constitution

There is a single Explanatory Memorandum for both this Bill and the Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002.

Since the imposition of the SG Charge may amount to the imposition of taxes, the amendment to the basis for calculating the SG Charge requires separate legislation to comply with the requirements of section 55, which was outlined in the Background to this Digest. For this reason, the amendments to the *Superannuation Guarantee Charge Act 1992* are contained in a stand-alone Bill.

Main Provisions

Item 1 amends **section 5** of the *Superannuation Guarantee Charge Act 1992* (the Act) to change the imposition of any superannuation guarantee charge of an employer from a year to a quarter. Section 6 of the *Superannuation Guarantee (Administration) Act 1992* defines

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quarter. This definition is being amended by **item 14** of Taxation Laws Amendment Bill (No. 2) 2002.

Item 2 amends the Act to change the amount of superannuation guarantee charge payable on a superannuation guarantee shortfall of an employer from the amount of shortfall in a year, to an amount of shortfall in a quarter.

Item 3 clarifies the application of the amendments by stating that they apply to SG shortfalls made under the *Superannuation Guarantee (Administration) Act 1992* for quarters that commence on or after 1 July 2003.

Concluding Comments

The proposal to require all SG contributions to be paid on a quarterly basis has received broad support. It was proposed as a Private Member's Bill during the 39th Parliament, was suggested in hearings and in evidence to a Senate Inquiry, and was the unanimous recommendation of that same Senate inquiry. The change will only affect 15 per cent of employers since 85 per cent of employers pay SG on at least a quarterly basis. The Bill will enhance the investment earnings of employees' superannuation, reduce the risk of potential loss of entitlements in the event of insolvency, reduce the number of lost members, and enhance the disability and income protection insurance of fund members.

Related issues, such as the proposed amendment to the SG earnings threshold and other 2002-03 Budget announcements, are arguably, not so salutary. Interested readers are referred to the Bills Digest for Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002.

Endnotes

- 1 This report can be accessed in its entirety via the following link:
http://www.aph.gov.au/senate/committee/superfinan_ctte/sgc/SGC%20report.pdf
- 2 Senate Select Committee on Superannuation and Financial Services, *Enforcement of the Superannuation Guarantee Charge*, 27 April 2001, pp. 52–3.
- 3 *ibid.*, p. 57.
- 4 Liberal Party of Australia, *A Better Superannuation System*, November 2001, p. 9.
- 5 The Hon. Peter Costello, MP, Treasurer, *Budget Paper No. 2: Budget Measures 2002-03*, Canberra, 14 May 2002, pp.13–14.

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- 6 Senator the Hon. Helen Coonan, Minister for Revenue and Assistant Treasurer, *A Better Superannuation System - Quarterly Superannuation Guarantee Contributions*, Press Release C49/02, 14 May 2002.
- 7 Association of Superannuation Funds of Australia, *New Rule Means Thousands Left Out Of Super*, Press Release, 15 May 2002.

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