

MT 2005/1 - What is the tax treatment of an expense incurred by a superannuation fund that is paid by an employer or eligible person on behalf of a superannuation fund?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *17 June 2009*



Miscellaneous Taxation Ruling

What is the tax treatment of an expense incurred by a superannuation fund that is paid by an employer or eligible person on behalf of a superannuation fund?

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Preamble

*The number, subject heading, **What this Ruling is about** (including **Class of person/arrangement** section), **Date of effect**, and paragraphs 5 to 9 and 12 of the **Ruling** part of this document are a 'public ruling' for the purposes of **Part IVAAA of the Taxation Administration Act 1953** and are legally binding on the Commissioner. In addition where the ruling deals with GST, it is a ruling for the purposes of section 37 of the **Taxation Administration Act 1953** and is legally binding on the Commissioner.*

Paragraphs 10 and 11 are not binding on the Commissioner of Taxation. Taxation Rulings TR 92/1 and GSTR 1999/1 explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.

*[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

What this Ruling is about

1. This Ruling sets out the Commissioner's views on the tax treatment of expenses incurred by a superannuation fund that are paid by an employer or eligible person¹ on behalf of the superannuation fund.
2. A reference in this Ruling to an employer or eligible person paying an expense on behalf of a superannuation fund is a reference to an employer or eligible person paying money to a third party to extinguish a present liability of a complying superannuation fund. This Ruling does not cover the tax treatment of losses or outgoings incurred by an employer that may indirectly give an economic benefit to a fund.

Class of persons

3. The class of persons to which this Ruling applies is employers and eligible persons who pay expenses on behalf of a superannuation fund and the funds that have incurred the expense.

¹ See the definition of 'eligible person' at paragraph 49 of this Ruling.

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Date of effect

4. This Ruling applies both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

5. [Withdrawn.]

6. [Withdrawn.]

7. [Withdrawn.]²

8. [Withdrawn.]

9. [Withdrawn.]

10. [Withdrawn.]

11. [Withdrawn.]

12. [Withdrawn.]

Goods and services tax

13. The employer or eligible person paying the expenses incurred by the fund is not entitled to input tax credits under Division 11 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) in relation to the acquisitions for which the expenses are paid because it has not acquired anything for the payment. The fund is entitled to input tax credits, including reduced input tax credits where applicable, in relation to the acquisitions, but only to the extent that credits would be available if the fund had paid the expense directly.

Explanation

Background

14. The Tax Office's preferred approach is for all superannuation fund expenses to be paid directly out of the fund itself and for superannuation contributions to be made directly to the fund. This provides clarity because the outgoings of the employer or eligible person and the fund directly match the tax treatment.

15. However, the Tax Office recognises that the practice of an employer or eligible person paying an expense on behalf of a superannuation fund is common. This is usually done for administrative ease, for example, where the fund does not have a cheque account. The practice involves the making of journal entries after the expense is paid that, in the case of the employer or eligible

² [Withdrawn.]

person, re-classifies the expense payment as a superannuation contribution and, in the accounts of the superannuation fund, recognises the making of the contribution and payment of the expense.

16. [Withdrawn.]³
17. [Withdrawn.]^{4 5 6}
18. [Withdrawn.]
19. [Withdrawn.]
20. [Withdrawn.]⁷
21. [Withdrawn.]^{8 9}
22. [Withdrawn.]
23. [Withdrawn.]^{10 11 12}
24. [Withdrawn.]
25. [Withdrawn.]
26. [Withdrawn.]
13 14
27. [Withdrawn.]¹⁵
28. [Withdrawn.]
29. [Withdrawn.]
30. [Withdrawn.]
31. [Withdrawn.]
32. [Withdrawn.]
33. [Withdrawn.]
34. [Withdrawn.]
35. [Withdrawn.]
36. [Withdrawn.]^{16 17 18}

³ A deduction may be allowable to certain associates of the direct employer. See the definition of 'eligible employee' at paragraph 48 of this Ruling.

⁴ [Withdrawn.]

⁵ [Withdrawn.]

⁶ [Withdrawn.]

⁷ [Withdrawn.]

⁸ [Withdrawn.]

⁹ [Withdrawn.]

¹⁰ [Withdrawn.]

¹¹ [Withdrawn.]

¹² [Withdrawn.]

¹³ [Withdrawn.]

¹⁴ [Withdrawn.]

¹⁵ [Withdrawn.]

¹⁶ [Withdrawn.]

¹⁷ [Withdrawn.]

¹⁸ [Withdrawn.]

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37. [Withdrawn.]¹⁹

38. [Withdrawn.]

Goods and services tax

39. Under the GST Act, registered entities are entitled to claim input tax credits for the GST paid on their creditable acquisitions.

40. Under section 11-5 of the GST Act you make a creditable acquisition if:

- (a) you acquire anything solely or partly for a creditable purpose; and
- (b) the supply of the thing to you is a taxable supply; and
- (c) you provide, or are liable to provide, consideration for the supply; and
- (d) you are registered, or required to be registered.

41. Section 11-15 of the GST Act defines 'creditable purpose':

- (1) You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise.
- (2) However, you do not acquire a thing for a creditable purpose to the extent that:
 - (a) the acquisition relates to making supplies that would be input taxed; or
 - (b) the acquisition is of a private or domestic nature.

42. It is the view of the Tax Office that the employer or eligible person is not entitled to input tax credits in respect of acquisitions of a superannuation fund, the costs of which are being borne by the employer or eligible person. This is because section 11-5 of the GST Act has not been satisfied in circumstances where an employer sponsor or eligible person pays expenses incurred by a superannuation fund, because the payer has not acquired anything for the payment.

Superannuation funds

43. In the case of the superannuation fund, the supply of an interest in or under a regulated superannuation fund is an input taxed supply under section 40-5 of the GST Act. Where an entity makes an acquisition in the course of an enterprise of supplying interests in a regulated superannuation fund, to the extent its acquisitions relate to making input taxed supplies, they are not for a creditable purpose. The entity is not entitled to input tax credits for those acquisitions. Superannuation funds can, however, claim reduced input tax credits

¹⁹ [Withdrawn.]

under Division 70 of the GST Act for certain acquisitions, such as in relation to administration expenses.²⁰ The superannuation fund may claim input tax credits in relation to the expense payment to the same extent applicable had the fund paid the expense directly.

- 44. [Withdrawn.]
- 45. [Withdrawn.]
- 46. [Withdrawn.]
- 47. [Withdrawn.]
- 48. [Withdrawn.]
- 49. [Withdrawn.]
- 50. [Withdrawn.]
- 51. [Withdrawn.]

Detailed contents list

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²⁰ See Goods and Services Tax Ruling GSTR 2004/1 which provides guidance on which acquisitions are reduced credit acquisitions that entitle an entity to a reduced input tax credit under Division 70 of the GST Act.

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Commissioner of Taxation

27 April 2005

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| <i>Previous draft:</i> | - ITAA 1936 82AAS(2) |
| MT 2004/D2 | - ITAA 1936 82AAT |
| | - ITAA 1936 82AAT(1A) |
| <i>Related Rulings/Determinations:</i> | - ITAA 1936 82AAT(2) |
| TR 92/1; TR 92/20; TR 93/17; TD | - ITAA 1936 267 |
| 2004/18; SGD 2003/7; GSTR | - ITAA 1936 274 |
| 1999/1; GSTR 2004/1 | - ITAA 1936 274(1) |
| | - ITAA 1936 274(1)(a)(i) |
| | - ITAA 1936 274(1)(b)(i) |
| <i>Legislative references:</i> | - ITAA 1936 274(2) |
| - ITAA 1936 26AAB | - ITAA 1936 281 |
| - ITAA 1936 Pt III Div 3 Subdiv AA | - ITAA 1997 8-1 |
| - ITAA 1936 82AAA | - ITAA 1997 26-80 |
| - ITAA 1936 82AAA(1) | - ITAA 1997 26-80(1) |
| - ITAA 1936 82AAC | - SGAA 1992 Pt 3 |
| - ITAA 1936 82AAC(1)(a) | - SGAA 1992 16 |
| - ITAA 1936 82AAC(1)(b) | - SGAA 1992 22 |
| - ITAA 1936 82AAC(2A) | - SGAA 1992 23 |
| - ITAA 1936 82AAR | - SCT(AC) Act 1997 8 |
| - ITAA 1936 Pt III Div 3 Subdiv AB | - SIS Act 1993 10(1) |

- SIS Act 1993 19
 - SIS Act 1993 42
 - SIS Act 1993 45
 - SIS Act 1993 52(2)(d)
 - FBTAA 1986 20
 - FBTAA 1986 136(1)
 - ANTS(GST)A 1999 Div 11
 - ANTS(GST)A 1999 11-5
 - ANTS(GST)A 1999 11-15
 - ANTS(GST)A 1999 40-5
 - ANTS(GST)A 1999 Div 70
 - TAA 1953 Pt IVA
 - TAA 1953 37
- Case references:*
- AAT Case 5636 (1990) 21 ATR 3212
 - Brookton Co-operative Society Limited v. Federal Commissioner of Taxation [1981] HCA 28; (1981) 147 CLR 441; (1981) 55 ALJR 479; (1981) 35 ALR 295; (1981) 81 ATC 4346; (1981) 11 ATR 880
 - Federal Commissioner of Taxation v. Northern Timber and Hardware Co. Ltd (1960) 34 ALJR 376; (1960) 12 ATD 257;
- [1961] ALR 466; (1960) 103 CLR 650
 - Metropolitan Gas Co. v. Federal Commissioner of Taxation (1932) 6 ALJ 318; (1932) 39 ALR 60; (1932) 2 ATD 178; (1932) 47 CLR 621
 - Raymor Contractors Pty Ltd v. Commissioner of Taxation (1991) 91 ATC 4259; 21 ATR 1410
 - Temples Wholesale Flower Supplies Pty Limited v. FC of T (1991) 29 FCR 93; 21 ATR 1606; 91 ATC 4387
 - Walstern v. Commissioner of Taxation 2003 ATC 5076; 54 ATR 423
- Other references:*
- Australian Oxford Dictionary 1999
 - Explanatory Memorandum to the Fringe Benefits Tax Assessment Bill 1986
 - Superannuation Circular I.A.1
 - Superannuation Circular II.D.3

ATO references

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