

SPR 2005/CHOICE -



Australian Government
Australian Taxation Office

I, Raelene Vivian, under subsection 21(1) of the *Superannuation Guarantee (Administration) Act 1992* make the following guidelines that the Commissioner of Taxation must have regard to when making a decision under subsection 19(2E) of the *Superannuation Guarantee (Administration) Act 1992*.

Dated this 16th day of September 2005

Signed by Raelene Vivian
Deputy Commissioner of Taxation
Australian Taxation Office

**WRITTEN GUIDELINES FOR THE REDUCTION OF AN INCREASE IN AN
EMPLOYER'S INDIVIDUAL SUPERANNUATION GUARANTEE SHORTFALL
UNDER THE *SUPERANNUATION GUARANTEE (ADMINISTRATION) ACT 1992***

1. During the period from 1 July 2005 to 30 June 2006 employers will in the first instance be provided with help and assistance as a first step to improving compliance with the choice of fund requirements. The Commissioner will reduce any choice shortfall to nil (without requiring the employer to provide evidence to support the reduction) unless there is evidence to show that an employer has intentionally disregarded the choice of fund requirements.
2. A 'business as usual' approach to the administration of the choice of fund requirements will commence from the quarter beginning 1 July 2006. By this time, employers will have had sufficient opportunity to understand and comply with the changes introduced. The reduction concessions based solely on the newness of the choice of fund requirements will no longer be appropriate. In keeping with this firmer approach, the introductory policy of reducing the choice shortfall to nil (in the absence of intentional disregard) will no longer apply.
3. All decisions on reduction of the choice shortfall will be made on a case by case basis in keeping with the principles of the Taxpayers' Charter and Compliance Model. Genuine attempts to comply will be treated differently to situations where an employer does not make an effort to comply.
4. The following table provides a guide to the case officer in making a decision on the initial level of reduction. These reduction levels are a starting point before taking into account additional factors, such as those set out in paragraphs 7 and 9.

Description	Level of reduction	Choice shortfall
<i>Intentional disregard</i> An employer knowingly decides not to comply with their choice of fund requirements	0%	100%
<i>Recklessness</i> An employer's actions demonstrate gross carelessness showing indifference to their choice of fund requirements	25%	75%
<i>Failure to take reasonable care</i> An employer fails to exercise the care that a reasonable, ordinary person would exercise to fulfil the employer's choice of fund requirements	75%	25%
<i>Reasonable care taken</i> An employer in all respects made a genuine effort to meet their choice of fund requirements	100%	0%

5. The terms 'intentional disregard', 'recklessness' and 'reasonable care' are existing terms in taxation and other contexts and their meanings are well established. The amount of the choice shortfall remaining after considering the levels of reduction in the above table will be maintained or varied, depending on the presence in a particular case of the factors listed in paragraphs 7 and 9.

Factors that will increase or decrease the initial level of reduction of the choice shortfall

6. After making a decision on the initial level of reduction the case officer will determine whether that level of choice shortfall should be maintained or varied (that is, to increase or decrease the choice shortfall). This decision also needs to be made on a case by case basis.

7. Factors which are relevant in considering a decrease in the choice shortfall (from the initial levels in the table) include:

- the employer made a full and voluntary disclosure, bringing to the attention of the Commissioner their failure to meet the choice of fund requirements, before the Commissioner informed the employer that compliance activities were to commence – 80%
- the employer voluntarily and fully disclosed any choice shortfall to the Commissioner after the Commissioner advised that compliance activities were to commence – 20%
- the employer failed to exercise reasonable care but the errors made were inadvertent errors only - 20%
- the employer otherwise has a good compliance history – 20%
- the employer has resolved any compliance issues and is now meeting the choice of fund requirements – 20%
- the employer's failure to comply with the choice of fund requirements was due to circumstances beyond the employer's control, such as sudden illness of key personnel, fire, flood or other events and the employer has since taken steps to mitigate the effect of those circumstances – 20%, and
- the employer co-operated fully with Tax Office staff – 20%.

8. The amount of the choice shortfall remaining after applying the initial reduction levels in the table in paragraph 4 will be reduced by the relevant percentage for each of the above factors present to a minimum of nil.

9. Factors which are relevant in considering an increase in the choice shortfall (from the levels in the table) include:

- the employer took steps to prevent or obstruct the Commissioner from finding out about the employer's failure to satisfy the choice of fund requirements, and
- the employer was liable for the choice shortfall in the previous notice period (or would have been but for a reduction of the choice shortfall).

10. The amount of the choice shortfall remaining after applying the initial reduction levels in the table in paragraph 4 will be increased by 20% for each of the above factors present (but not to an amount greater than the original amount before applying the initial reduction levels).

11. Where a tax officer finds the remaining amount of the choice shortfall is less than \$25.00 and that amount in the circumstances of the case and in relation to the individual's overall entitlement is not material, the choice shortfall will be reduced to nil, provided the employer has not intentionally disregarded their obligations.

12. Where repeated voluntary disclosures by an employer indicate the employer is attempting to abuse the voluntary disclosure concession, no reduction for voluntary disclosure will apply.

New employers

13. The Commissioner's approach to the administration of the choice of fund requirements for the introductory period will extend to the first year of the operation of new employers. This concession will only apply to an employer whose principals have not previously been employers or held a position that was responsible for discharging the responsibilities of an employer.

Other matters

14. While the law requires a decision to be made in respect of the choice shortfall of each employee, where it is evident that the circumstances are similar in relation to a particular group of employees, the case officer will apply the same level of reduction to the choice shortfall in relation to each employee in the group.

15. The Commissioner will give written notice of the decision made under subsection 19(2E) to the employer who is liable to pay the choice shortfall. This written notice will contain the reasons why the particular decision was made (irrespective of the level of reduction).

16. The Commissioner's power to reduce the choice shortfall does not extend to any individual superannuation guarantee shortfalls which arise where the employer fails to make sufficient superannuation contributions to reduce to nil the employer's charge percentage under subsection 19(2).