



REPORTABLE EMPLOYER SUPERANNUATION CONTRIBUTIONS (“RESC”)

EFFECTIVE FROM 1 JULY 2009

The 2008 – 09 Budget announced three measures to expand income definitions used for means-tested tax and transfer system programs.

These measures were designed to enhance the fairness and integrity of the tax and transfer systems by removing inconsistencies in the treatment of non-wage remuneration and ensure better account is taken of certain losses.

One measure, *Means testing of government support – expanded definitions of income to include certain “salary sacrificed” contributions* will mean that particular “salary sacrificed” superannuation contributions are assessed as income.

As a result employees that reduce their assessable income by electing to have salary contributed to superannuation will be treated on an equivalent basis to those who cannot access salary sacrifice.

A new definition of “reportable employer superannuation contributions (“RESC”)” has been inserted into the *Income Tax Assessment Act 1997* to capture the particular “salary sacrificed” superannuation contributions added to income as a result of means testing reforms announced in the 2008-09 Budget.

The fact that superannuation contributions have been made on behalf of an employee does not mean they are RESC. It is only those contributions made on behalf of an employee in circumstances where the employee had some capacity, or might reasonably be expected to have some capacity, to influence the size of the contribution or the way in which the contribution was made.

WHAT ARE RESC?

There are two types of superannuation contribution made on behalf of an employee that may be RESC.

1. **any amount made where the individual has, or has had, or might reasonably be expected to have or have had, capacity to influence the size of the amount;**

Example

Amounts that an employee has elected to have contributed to superannuation as part of a “salary sacrifice arrangement”.

This involves an arrangement between the employer and their employee to have prescribed amounts or a prescribed percentage, of their salary contributed to superannuation.

Mary asks her employer to contribute \$500 per annum or say 5% of her weekly wage to superannuation in addition to the 9% the employer is already contributing.

While Mary’s employer is obligated to make the 9% contribution on her behalf, it is only the \$500 per annum or the 5% of her weekly wage that would be RESC.

Example

Where contributions above an amount required under superannuation guarantee law are made pursuant to the terms of a common law employment contract or as a result of some agreement between an employee and their employer for increased superannuation contributions to be made on behalf of an employee as a part of a remuneration package.

During negotiations of Bob’s common law employment contract, Bob’s employer offers him the opportunity to have increased superannuation contributions as part of his range of employment related benefits. While there was no obligation on Bob’s part to take up his employer’s offer Bob elects to have \$10,000 paid on his behalf to superannuation in addition to the 9% his employer would normally contribute.

While Bob’s employer is obligated to make the 9% contribution on his behalf, the additional \$10,000 contribution would be RESC.

Example

It is not necessary for contributions to be compelled by law for them to fall outside of the definition of RESC. To the extent that an employer makes contributions above those mandated by law for administrative or other considerations, over which the employee has no, and could not reasonably be expected to have, capacity to influence, then those contributions will not be RESC.

Nick's ordinary time earnings are \$60,000 per annum and he also has a fully maintained motor vehicle valued at \$10,000 per annum in his remuneration package. Nick's employer has a policy of calculating superannuation contributions based upon all aspects of the remuneration package and not just ordinary time earnings, so in Nick's case the employer makes contributions based upon 9% of \$70,000 and not \$60,000 per annum.

While Nick's employer is only obligated to make the 9% contribution based upon ordinary time earnings, the organization has made a decision to make contributions upon a base in excess of that required under law. Since Nick has not influenced further contributions to be made on his behalf or influenced contributions to be made in such a way that his assessable income is reduced, the additional contribution is not RESC.

2. **any amount that an employee has or has had, or might reasonably be expected to have or have had, capacity to influence to be made in such a way so that his or her assessable income is reduced.**

Example

Amounts that an employee has elected to have contributed to superannuation as part of a "salary sacrifice arrangement" from their pre-tax earnings.

This involves an arrangement between the employer and their employee to have contributions to superannuation made from the employee's pre-tax earnings.

Mary asks her employer to contribute \$500 per annum or say 5% of her weekly wage before tax to superannuation in addition to the 9% the employer is already contributing.

While Mary's employer is obligated to make the 9% contribution on her behalf, it is only the \$500 per annum or the 5% of her weekly wage contribution from her pre-tax earnings that would be RESC because she has reduced her assessable income base.

Example

For some funds, particularly defined benefit funds, members are required to make contributions from their assessable income known as “member contributions”. These contributions are typically a certain percentage although members may elect the relevant percentage of contribution they would like to make.

All contributions made from the employee’s assessable income that is after tax deductions, are excluded from the RESC definition.

However if the employee has the capacity to “salary sacrifice” a member contribution pre tax under the rules of a defined benefit scheme then the amount of the contribution will be RESC

Rhonda’s employer makes contributions on her behalf to a defined benefit fund. In addition the rules of the fund require Rhonda to make a member contribution equal to 7% of her ordinary time earnings from her assessable or post tax income.

The rules of the fund were recently changed so that members can elect to make their member contributions from either pre or post tax income and Rhonda decides to take the pre tax option.

As the rules of Rhonda’s fund stipulate the amount she must make as a member contribution and she has no control over that amount, the contribution would not be RESC.

However now that Rhonda has made an election to make the contributions from pre tax income which has the effect of reducing her assessable income the contributions are now RESC.

WHAT DO EMPLOYERS AND EMPLOYEES NEED TO DO?

Effective from 1 July 2009 all employers will have the same reporting obligations for RESC on payment summaries as currently applies for other employment benefits such as salary or wages and reportable fringe benefit amounts.

This means that from 1 July 2009 all employers will need to ensure that their existing payroll systems and/or providers have the software capacity to capture RESC information and report it accordingly.

Given the impact of RESC on an employee’s capacity to be eligible for certain government benefits and its inclusion in the basis for calculating certain taxes such as the Medicare Levy Surcharge, it is important for all employees who currently make additional superannuation contributions to seek independent advice in respect to their personal circumstances.