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Superannuation fund choice

From 1 July 2005 many employees will be able to have their Superannuation Guarantee (SG) contributions paid into the complying superannuation fund of their choice.

Below is a summary of the "choice of fund" provisions. Many details, such as prescribed information for choice of fund forms, will be provided in regulations that are not yet available.

Which employees will be offered choice?

Broadly speaking, from 1 July 2005 all employees must be offered choice except where the employer is required to contribute to any of the following:

- A nominated fund in a collective Certified Agreement (CA) or individual Australian Workplace Agreement (AWA).
- An arrangement specified under a State industrial award.
- An unfunded public sector scheme where the employer is a statutory or Government body.
- The Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation Scheme (PSS) until such time as amendments are made to enable employees in these arrangements to choose a fund.

Where fund choice applies and an employee does not exercise this choice (see below), their employer must, where required, contribute to a fund named under an applicable Federal award. If the employer is not required to contribute under the award, or there is no fund specified, the employer may contribute to any complying fund.

Note: Employers contributing to defined benefit arrangements will be afforded protection where they would be required to fund additional benefits for employees choosing another fund. Further, an employer who does not provide choice will not be subject to any penalty if the defined benefit fund is in surplus and the employer is on a contribution holiday. An exception also applies where a member of a defined benefit fund has reached their maximum benefit and the employer is no longer required to contribute.

Implications for Employees

- Commencing 1 July 2005, eligible employees will be given a greater choice as to which superannuation fund their employer must contribute compulsory superannuation.
- Employees who wish to choose a new fund will be required to provide their employers with certain information about their chosen fund and written evidence that the selected fund will accept their employer contributions.

Implications for Employers

- Apart from the exceptions listed above, employers from 1 July 2005 will have to satisfy the new choice of fund obligations.

Where an employer is required to offer choice, they must provide employees with a standard choice form within a specified time frame as follows:

1. By 29 July 2005 for existing employees at 1 July 2005.

2. Within 28 days from the date of commencement of employment for new employees (unless the employee has already chosen a fund).

- A Standard Choice Form (to be developed by the Australian Taxation Office) will be required to be given to employees by employers which will advise employees of important facts they should consider before they exercise choice.
- If an employee does not choose a fund, employers will continue to make contributions to the same fund as they do now, provided that fund offers a minimum level of insurance cover. Insurance obligations of funds will be determined following consultation between the Government and the industry.
- Employers do not have to accept a choice election from an employee if that employee has previously selected a fund within the past year or if the employee provides insufficient written evidence (including name and contact details for the fund and evidence that the fund will accept the contributions).

Employer penalties

An employer failing to meet the choice of fund requirements is subject to a "choice penalty", which in general terms, is calculated as 25% of the SG shortfall that would apply if the employer did not meet their SG obligations under current rules. The penalty applies where the employer pays their SG contributions to a fund that does not meet the requirements.

The choice penalty is capped at $500 per employee for a "notice period" which starts from the commencement of choice, or the first day of employment for an employee, and ends when the ATO notifies the employer in writing. If the employer subsequently fails to meet the choice of fund requirements for an employee, the choice penalty will again accrue up to a maximum of $500 per notice period.

The above is a summary only and we will provide a more comprehensive outline of the choice of fund requirements once further details come to hand.

Reference: Press Release: Prime Minister, Mr John Howard, 21 June 2004; Press Release C053/04, Assistant Treasurer, Senator Helen Coonan 21 June 2004; Democrats Media Release 04/505, Senator Andrew Bartlett, 21 June 2004. Media Release: Senator Helen Coonan 23 June 2004, C055/04.

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