

canberra times: q&a

Q 1: I am 61, working, and salary sacrificing into superannuation to increase retirement savings. However the benefit of this strategy is reduced because my employer reduces the employer superannuation guarantee payment to 9% of my taxable salary, instead of 9% of my overall package. It still works out better for me but it seems like I am being taken advantage of by my employer as they now pay less overall. Is this legal?

Withheld, Canberra

A 1: The situation you describe is one that many people have found themselves in, and often well after they have commenced a salary sacrifice arrangement. As you have mentioned, you are better off as a whole, but overall superannuation contributions have certainly been reduced slightly by a reduction in the employer super guarantee contribution (SGC). Unfortunately, this action is perfectly legal by the employer. For example:

If an employee's salary was \$60,000, then the employer would be required to contribute 9% SGC being \$5,400 pa. If this employee salary sacrifice \$10,000 pa into superannuation, saving some \$3,150 pa in income tax, then the employer is only required to pay 9% SGC on the reduced salary of \$50,000, leading to SGC of \$4,500 pa. So while there would be \$900 pa less paid in SGC, the employee is still overall better off due to a larger reduction in tax paid, even after allowing for the 15% super contributions tax of \$1,500.

The issue is that an employer is only required to pay the minimum 9% SGC based on an employee's Ordinary Time Earnings (OTE). The OTE is usually the amount the employee earns for their ordinary hours of work and includes things like commissions, most bonuses, shift loadings and allowances. OTE does not include overtime payments. As entering into a salary sacrifice arrangement reduces an employee's OTE, it will reduce the amount of super guarantee that an employer is required to pay.

Many employers will choose to pay the SGC based on an employee's total salary package, regardless of whether the employee is salary sacrificing to super or other salary packaged items like fully maintained leased cars. Some employers, such as yours, will apply the strict definition of the SGC rules.

Now, while the employer is within their rights to reduce the SGC payments when an employee's OTE reduces, the employee can certainly request during salary package negotiations to have the SGC paid on an employee's pre salary sacrifice package. As the change would be marginal to the employer they may be happy to agree.

The best an employee can do is to understand their employer's (or prospective employer's) approach to this and to have an employment agreement that is based on SGC calculated on the higher total package figure.

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Phil Thompson is a certified financial planner and authorized representative of Rise Financial Pty Ltd (ABN 86350987645), AFSL 311718, an Approved Financial Planning Association Professional Practice. Answers should be used as a general guide only and professional advice should be sought before making investment decisions.

Send your financial questions to phil@risefinancial.com.au