



# ***SGD 2003/5 - Superannuation guarantee: how do the exclusions under sections 27 and 28 of the Superannuation Guarantee (Administration) Act 1992 interact?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 October 2003*

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# Superannuation Guarantee Determination

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## **Superannuation guarantee: how do the exclusions under sections 27 and 28 of the *Superannuation Guarantee (Administration) Act 1992* interact?**

### ***Preamble***

*Superannuation Guarantee Determinations do not have the force of law. Each decision made by the Australian Taxation Office is made on the merits of the individual case having regard to any relevant Rulings and Determinations.*

1. Subsection 27(1) and section 28 of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) detail salary or wages that are not to be taken into account for the purposes of calculating an individual superannuation guarantee shortfall under section 19 of the SGAA.
2. Salary and wages excluded by subsection 27(1) and section 28 of the SGAA are still taken into account when calculating the total amount of salary or wages paid in the month for the purposes of subsection 27(2) of the SGAA.
3. This is because they are excluded only for the purpose of making a calculation under section 19<sup>1</sup>, not for the purpose of making a calculation under subsection 27(2).

### **Example 1**

4. *During the four weeks of August, Kelly was paid \$200 per week, totalling \$800 for the month. She turned 70 in the second week of the month. As Kelly was paid over \$450 for the month, her employer is required either to make contributions on her behalf or to pay the superannuation guarantee charge. The contributions or the charge would only be based on the earnings paid in the week when Kelly was under 70 years of age, that is, \$200.*

### **Example 2**

5. *Brenda is 17 and works part time for a small boutique. In September she was paid \$810 over 4 weeks, as follows:*

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<sup>1</sup> Section 19 of the SGAA deals with how to calculate an employee's individual superannuation guarantee shortfall for the 1993-94 year and subsequent years.

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| <i>Week</i> | <i>Hours</i> | <i>Wage</i> |
|-------------|--------------|-------------|
| <i>1</i>    | <i>25</i>    | <i>200</i>  |
| <i>2</i>    | <i>15</i>    | <i>110</i>  |
| <i>3</i>    | <i>35</i>    | <i>340</i>  |
| <i>4</i>    | <i>20</i>    | <i>160</i>  |

6. *As Brenda was paid over \$450 in the month, her employer must either make contributions on her behalf or pay the superannuation guarantee charge. The contributions or the superannuation guarantee charge would only be based on the earnings paid in the week where Brenda worked more than 30 hours, that is, \$340, because the amounts paid in the other weeks are excluded by section 28. Section 28 provides that 'salary and wages paid to a part-time employee who is under 18 are not to be taken into account for the purpose of making a calculation under section 19.' This, in conjunction with the definition of part-time employee in section 6, means that if a person works less than 30 hours per week and is under 18 years old those earnings are not to be taken into account when calculating the superannuation guarantee shortfall.*

7. *If Brenda was paid the total amount of \$810 in week 4 instead of receiving weekly payments, the answer would still be the same. In this situation Brenda is still a part time employee in the weeks in which she is employed to work not more than 30 hours per week. Because she is under 18, this means that any payments for work in respect of the weeks when she works less than 30 hours are excluded by section 28 regardless of when they are paid.*

**Date of Effect:**

8. This Determination applies from 1 October 2003. It replaces SGD 94/1 which issued on 27 January 1994. However, this Determination 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 Determination.

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**Commissioner of Taxation****1 October 2003**

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*Previous Rulings/Determinations:*

SGD 94/1

*Subject references:*

- employee exemptions
- part-time employees
- contributions

*Legislative references:*

- SGAA 1992 6

- SGAA 1992 19
- SGAA 1992 27
- SGAA 1992 27(1)
- SGAA 1992 27(2)
- SGAA 1992 28

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ATO references

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