


SGR 93/4 - Superannuation guarantee: 'salary or wages'

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Superannuation Guarantee Ruling

Superannuation guarantee: 'salary or wages'

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

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What this Ruling is about

1. This Ruling explains the meaning of the words 'salary or wages' in the *Superannuation Guarantee (Administration) Act 1992* (SGAA).

2. An employer needs to use 'salary or wages' in calculating:

- 'annual national payroll' in the base year (subsection 6(1)); and
- each individual superannuation guarantee shortfall (sections 18 and 19).

3. This Ruling does not examine how to calculate 'annual national payroll' or how to calculate an individual superannuation guarantee shortfall.

Ruling

Salary or wages?

4. Under the SGAA, 'salary' or 'wages' have their ordinary meanings. The Macquarie Dictionary (2nd revision) defines these as:

Salary 'a fixed periodical payment, usually monthly, paid to a person for regular work or services, ESP. work other than that of a manual, mechanical, or menial kind.'

Wage '1. that which is paid for work or services, as by the day or week.
2. the share of the products of industry received by labour for its work, as distinct from the share going to capital.
3. recompense or result ...'

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Amounts which are included in 'salary or wages'

Allowances

5. An allowance is a payment to an employee for a pre-determined amount to cover an estimated expense (e.g. clothing allowances) or to compensate for particular working conditions (e.g. a site allowance). It is paid regardless of whether or not the employee incurs the expense.

6. Allowances are 'salary or wages', unless they are fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) (e.g. a living away from home allowance).

Ordinary Time Earnings

7. Payments that form part of 'Ordinary Time Earnings' (OTE) also form part of 'salary or wages'. However, payments specifically excluded from OTE will not necessarily be excluded from the definition of 'salary or wages'. (The Commissioner has explained OTE in a separate Ruling.)

Payments made to employees subject to the Prescribed Payments System (PPS)

8. The labour portion of any payment to a person who is:

- a) an 'employee' under subsection 12(3) of the SGAA; and
- b) in receipt of a payment to which the PPS applies (as defined in Part VI of Division 3A of the *Income Tax Assessment Act 1936* (ITAA))

will form part of that person's salary or wages

Bonuses and ex gratia payments

9. A **bonus** will form part of an employee's 'salary or wages' where the bonus is paid in respect of ordinary hours of work. The *CCH Macquarie Dictionary of Employment and Industrial Relations* defines a bonus as:

"a payment above the regular basic rate or standard pay, e.g., a payment for overtime or shift-work, or attendance, an allowance for work under exceptional conditions, as well as an incentive payment made

under a piecework system or incentive scheme or as a production bonus."

10. For the definition of 'salary or wages', a bonus that is an *ex gratia* payment will be part of an employee's 'salary or wages' if that payment is made in an employment context and not on a personal basis.

Commission

11. Commission payments are specifically included as 'salary or wages' under paragraph 11(1)(a) of the SGAA. A commission includes any payments made to an employee on the basis of performance criteria (e.g. a payment based on percentage of sales).

Payments to Directors etc

12. Payments for the performance of duties as a member of the executive body of a body corporate are included as 'salary or wages' under paragraph 11(1)(b) of the SGAA.

Payments to Government office holders

13. The SGAA includes as 'salary or wages' the remuneration of:

- members of the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory; (paragraph 11(1)(c))
- people in the service of, or holding an appointment, office or position with, the Commonwealth, a State or a Territory (including members of the defence force and the police forces); (paragraph 11(1)(e))
- members of a local government council; (paragraph 11(1)(e))

14. Remuneration is a payment for service and not a mere reimbursement of actual expenses. It includes amounts described as allowances. It does not include fringe benefits within the meaning of the FBTA.

Artistes and sportspersons

15. Paragraph 11(1)(d) of the SGAA includes as 'salary or wages' payments to persons for performing in:

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- or for providing services in connection with, artistic, sporting or promotional displays;
- or in connection with, the making of any film, tape or disc or any television or radio broadcast.

Salary or wages does not include

Domestic or private remuneration

16. Subsection 11(2) of the SGAA **excludes** from 'salary or wages' remuneration under a contract for the employment of a person, for not more than 30 hours per week, in work that is wholly or principally of a domestic or private nature.

Fringe benefits

17. Subsection 11(3) of the SGAA **excludes** from 'salary or wages' fringe benefits as defined in the FBTAA.

Reimbursements

18. Reimbursements are not 'salary or wages'. A payment is a reimbursement when the employee is compensated exactly for all or an agreed part of an expense already incurred, although not necessarily disbursed. With reimbursements in general, the employer considers the expense to be its own and the employee incurs the expenditure on behalf of the employer. A requirement that the employee vouch expenses lends weight to a presumption that a payment is a reimbursement rather than an allowance.

19. An employer may make a payment in advance to an employee to enable the employee to expend an amount of money. Where the employee is required to account for any unspent monies to the employer, the payment is neither an allowance nor a reimbursement. In this situation the employee expends the money as an agent for the employer. The payment is not included in 'salary or wages'.

Date of effect

20. This Ruling sets out the current practice of the Australian Taxation Office and is not

concerned with a change in interpretation. Consequently, it applies from the time that the legislation commenced to operate.

Examples

Salary or wages includes:

21. The following are examples of payments that form part of 'salary or wages':

- the labour portion of a payment to a person who works under a contract that is wholly or principally for his or her labour;
- overtime and penalty rates;
- bonuses and commission payments;
- payments for unused annual leave, long service leave and leave loading;
- redundancy, and other eligible termination, payments;
- payments for sick leave, bereavement leave, maternity and paternity leave and other similar types of leave;
- salary or wages which are subsidised by a Government payment (e.g. job start allowance);
- payments to an 'employee' under a profit share arrangement, other than by way of trust distributions or dividends on shares.

Salary or wages does not include:

22. The following are examples of payments that are **not** part of 'salary or wages':

- payments to a person to enter into a restraint of trade;
- reimbursements of expenses;
- pension payments and social security benefits;
- partnership and trust distributions;
- dividends;
- workers compensation payments, including payments made by an employer to 'top up' wages under a workers compensation agreement.

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18;
- SGAA 19

ATTACHMENT A

CHECKLIST - SALARY/WAGES & OTE

Payment Type	Salary or Wages?	OTE?
Allowances paid (other than a reimbursement of expenses)	Yes	Yes
Reimbursement of expenses (e.g. travel costs)	No	No
Bonuses that do not relate to specific performance criteria - (e.g. Christmas bonuses)	Yes	No
Other bonuses	Yes	Yes
Commission	Yes	Yes
Over award payments	Yes	Yes
Shift loading	Yes	Yes
Overtime	Yes	No
Casual loading	Yes	Yes
Benefits subject to fringe benefits tax	No	No
Benefits under Employee Share Acquisition Schemes paid as a bonus and not subject to Fringe Benefits Tax	Yes	Yes
Workers compensation payments, including top-up payments	No	No
Government wage subsidies (e.g. Jobstart)	Yes	Yes
Payments when on maternity or paternity leave	Yes	No
Pay for annual holiday leave taken	Yes	Yes
Annual leave loading	Yes	No
Pay for sick leave taken	Yes	Yes
Pay for long service leave taken	Yes	Yes

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Payment Type	Salary or Wages?	OTE?
Accrued annual leave, long service leave and sick leave paid as a lump sum on termination	Yes	Yes
Payments in lieu of notice	Yes	No
Redundancy payments	Yes	No
Other payments made by an employer on termination of employment	Yes	No
Director's fees	Yes	Yes
Payments for performance in, or provision of services relating to, entertainment, sport, promotions, films, discs, tapes, TV, or radio	Yes	Yes
Payments to a contractor who is an employee under the SGAA (labour portion only)	Yes	Yes
Dividends	No	No
Partnership and trust distributions	No	No
Payments for entering into a restraint of trade agreement	No	No
Payments for domestic or private work under 30 hours per week	No	No