

Superannuation Guarantee Determinations 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 Determinations and Rulings.

Superannuation Guarantee Determination

Superannuation guarantee: how can an employer work out the value of the labour component of a contract that is wholly or principally for a person's labour under subsection 12(3) of the *Superannuation Guarantee (Administration) Act 1992*?

1. Under the *Superannuation Guarantee (Administration) Act 1992* (SGAA), employers must make superannuation contributions into a complying fund in respect of their eligible employees in accordance with minimum prescribed levels to avoid having to pay the superannuation guarantee charge.
2. Where a person is not a 'common law' employee but is an employee under subsection 12(3) of the SGAA because they are contracted wholly or principally (more than 50%) for their labour, the **salary or wages** of the employee is defined as the labour component of the contract under paragraph 11(1)(ba) of the SGAA. This Determination does not apply to 'common law' employment.
3. 'Labour' includes mental and artistic effort as well as physical toil (*Deputy Commissioner of Taxation v. Bolwell* (1967) 1 ATR 862 at 873).
4. If the labour component of a contract that is wholly or principally for a person's labour is clearly identifiable, then this labour component will be the employee's **salary or wages**. This is the case where the labour and non-labour components of a contract are clearly expressed as separate parts of the contract. However, the Commissioner will not automatically accept the parties' costings (see Superannuation Guarantee Ruling SGR 93/1 at paragraph 30).

Market value of labour

5. If the labour component of a contract **cannot** be worked out, an employer can use a reasonable market value of the labour component of the contract to represent the **salary or wages** of an employee.
6. Under section 79 of the SGAA, an employer must keep records that show how the value of the labour component under a contract was worked out. The records should demonstrate that the value used was a reasonably accurate estimate of the market value.

Example 1

XYZ Pty Ltd contracts Bill for 1 month to load various goods on to lorries. Bill invoices XYZ Pty Ltd and is paid \$1,600.00 for the month's loading work. The invoice clearly expresses the labour component of the contract as \$1,200.00 (or 75% of the total value of the contract) and includes an

amount of \$400.00 for the cost of hiring a fork lift. As a result, \$1,200.00 would be Bill's salary or wages in respect of the contract.

Example 2

A person is contracted to provide medical services under a contract wholly or principally for their labour. The person is paid an allowance for 'background practice costs' that the person may or may not incur in providing services to the employer hospital. It is paid regardless of whether or not the person incurred the 'background practice costs'.

The allowance in these circumstances would form part of the labour of the person under the contract as it does not represent a distinct separate component of the contract. The allowance merely forms part of the process which calculates the remuneration of the contracted person.

Example 3

Blackacre Couriers Limited contracts Betty to provide her labour as well as her vehicle. Under the terms of engagement, she is not a 'common law' employee but is contracted wholly or principally for her labour. The contract necessarily incorporates the running costs associated with providing her vehicle under the contract.

An acceptable market value of the labour component of the contract could be an equivalent transport award weekly rate of pay for a driver performing the same duties as Betty. If a grade 2 driver under that award includes drivers who drive vehicles the same as Betty's vehicle, and they receive \$390.50 per week, this amount would be an acceptable market value of Betty's labour. In the 1997 financial year, presuming no change to the rates, an employer would generally be required to make superannuation contributions of 6% of \$390.50 per week before 28 July 1997 in order to avoid paying the superannuation guarantee charge.

If Betty was operating in a particular State where that State had a weekly award rate of pay for an equivalent driver, this would generally be the more appropriate market rate value.

Commissioner of Taxation

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