

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: is a director who is a partner in a professional partnership, and who must pass on any directors' fees received to the partnership, an employee of the paying company?

1. Generally, no. A partner would not be an employee of the company for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) if the partner:
 - contracts on behalf of his or her partnership to provide directorship services to a company; and
 - must pass on any directors' fees to the partnership as required by the partnership agreement.
2. It is common practice for a partner in a professional partnership, such as accounting or legal firms, to be appointed as a director of a client company or a public company. The appointment is usually considered to be another service provided by a professional partnership or an extension of the usual business activities of the partnership, and is made because of the partner's connection with the partnership. Often, the partner is also required to obtain the approval of the other partners to accept the appointment as director. The partnership agreement usually provides that directors' fees received by partners are to be paid into the partnership account.
3. The appointment as director is therefore either as agent for the partnership, in accordance with the partnership laws of the States and Territories, or resulted from the opportunity arising from membership of the partnership. Any directors' fees received by the partner are received in the capacity as trustee for the partnership. The directors' fees are income derived by the partnership and not by the individual director or partner.
4. As the partner is not an employee in the above circumstances, the company engaging the director or the partner does not have to pay any superannuation contributions under the SGAA.
5. However, in the case where an appointment as a director is unrelated to the partner's membership of the partnership, the appointed partner is beneficially entitled to any directors' fees. The partner is an employee of the paying company for the purposes of the SGAA, notwithstanding any agreement to pay the directors' fees over to another entity or person.

Withdrawal of SGD 93/10

6. This Determination replaces SGD 93/10 which is withdrawn from the date of this Determination.

Commissioner of Taxation

26 February 1997

FOI INDEX DETAIL: [Reference No.](#) I 1218289

Not previously released in draft form

[Related Determinations:](#) TD 97/2

[Related Rulings:](#)

[Subject Ref:](#) directors; nominee; partners

[Legislative Ref:](#) SGAA

[Case Ref:](#)

[ATO Ref:](#) NAT 96/11563-66; NAT 97/32-2

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