

LCR 2026/D1 - Payday Super: qualifying earnings

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Law Companion Ruling

Payday Super: qualifying earnings

📌 Relying on this draft Ruling

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Ruling applies to you and you rely on it reasonably and in good faith, the fact that you acted in accordance with this draft Ruling would be a relevant factor in your favour in the Commissioner's exercise of any discretion in regard to the imposition of penalties or interest.

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What this draft Ruling is about

1. This draft Ruling¹ is part of a suite of law companion rulings relating to the reforms to the Superannuation Guarantee (SG) framework made by the *Treasury Laws Amendment (Payday Superannuation) Act 2025* and the *Superannuation Guarantee Charge Amendment Act 2025*.

¹ For readability, all further references to ‘this Ruling’ refer to the Ruling as it will read when finalised. Note that this Ruling will not take effect until finalised.

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2. These reforms, referred to as ‘Payday Super’ or ‘the Payday Super reforms’, apply from 1 July 2026. For an overview of the Payday Super reforms, see paragraphs 8 to 12 of draft Law Companion Ruling LCR 2026/D3 *Payday Super: calculation and assessment of the superannuation guarantee charge*.

3. This Ruling sets out the Commissioner’s views on what constitutes qualifying earnings within the meaning of section 10A of the *Superannuation Guarantee (Administration) Act 1992* (SGAA). Qualifying earnings are used to calculate the minimum level of superannuation contributions an employer needs to make for the benefit of its employees to avoid liability to the SG charge under the SGAA.

4. In this Ruling, terms are used with the following definitions, unless otherwise indicated:

- **Eligible contribution** has the meaning given by sections 18A and 18B of the SGAA. Draft Law Companion Ruling LCR 2026/D2 *Payday Super: eligible contributions* contains guidance on the Commissioner’s views on this term.
- **Individual SG amount** for an employee for a QE day is equal to the amount of the qualifying earnings for the employee for the QE day multiplied by the charge percentage (12) divided by 100.²
- **QE day** means a day on which an employer makes a payment of qualifying earnings to or for an employee.³ See paragraphs 17 and 18 of LCR 2026/D3.
- **Sacrificed contribution** means a contribution to a complying superannuation fund or a retirement savings account (RSA) made under an arrangement described in paragraph 10A(1)(h) of the SGAA (about salary sacrifice arrangements).⁴

5. In addition, terms that are defined in the SGAA or the *Income Tax Assessment Act 1997* (ITAA 1997) are used with their defined meaning unless otherwise indicated.

6. All further legislative references in this Ruling are to the SGAA, unless otherwise indicated.

Date of effect

7. When the final Ruling is issued, it is proposed to apply to payments of qualifying earnings to or for an employee by an employer on or after 1 July 2026.

Overview of qualifying earnings

8. Qualifying earnings is an important concept in the Payday Super framework as it is the single earnings base for working out the individual SG amount – that is, the amount of superannuation required to be contributed by the employer for the employee in order to avoid having an individual base SG shortfall greater than nil for that employee for a QE day. An individual SG amount arises when an employer makes a payment of qualifying earnings to or for an employee on a particular day (QE day).⁵

² Subsection 17A(2) of the SGAA.

³ Subsection 17A(1) of the SGAA.

⁴ Subsection 6(1) of the SGAA (definition of ‘sacrificed contribution’).

⁵ Subsection 17A(1).

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9. The phrase payment of qualifying earnings to or for an employee by an employer is defined to mean⁶:

- (a) a payment of qualifying earnings to the employee by or on behalf of the employer, or
- (b) for arrangements involving sacrificed contributions – the reduction in the amount of qualifying earnings made in return for the sacrificed contribution.

10. For the purposes of the SGAA, the meaning of ‘employee’ and ‘employer’ have a wide meaning encompassing both their ordinary meaning and an extended meaning under section 12.⁷

11. A person’s qualifying earnings are exhaustively defined under subsection 10A(1). They are amounts covered by one or more of paragraphs 10A(1)(a) to (h):

- ordinary times earnings (OTE)⁸, an existing concept under the SGAA (see paragraphs 19 to 71 of this Ruling)
- all commissions payable to the person (see paragraph 73 of this Ruling)
- all payments for the performance of the person’s duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate (see paragraph 74 of this Ruling)
- all payments under a contract referred to in subsection 12(3) that are in respect of the person’s labour under the contract (see paragraph 75 of this Ruling)
- all remuneration of the person as a member of the Parliament of the Commonwealth or a state or the Legislative Assembly of a territory (see paragraph 76 of this Ruling)
- all payments to the person for work referred to in subsection 12(8), which includes entertainers, artists, musicians, sports persons and others as discussed at paragraph 77 of this Ruling
- all remuneration of the person in circumstances referred to in subsection 12(9) or (10), for example, public office holders (see paragraph 78 of this Ruling), and
- amounts of a person’s qualifying earnings sacrificed in exchange for additional superannuation contributions under a salary sacrifice arrangement (see paragraph 79 of this Ruling).

12. To the extent that an amount is covered by more than one of the paragraphs in subsection 10A(1), that amount is counted only once for the purpose of working out the amount of a person’s qualifying earnings.⁹

⁶ Subsection 10A(4).

⁷ The ATO view on the ordinary and extended meaning of employee for SGAA purposes is set out in Taxation Ruling TR 2023/4 *Income tax and superannuation guarantee: who is an employee?* See also Superannuation Guarantee Ruling SGR 2005/2 *Superannuation guarantee: work arranged by intermediaries*.

⁸ As defined under subsection 6(1).

⁹ Subsection 10A(2).

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13. The definition of qualifying earnings specifically excludes certain earnings or remuneration of, or payments to a person¹⁰:

- payment of an amount that represents the reversal of all or part of a sacrificed contribution (see paragraphs 95 to 96 of this Ruling)
- earnings or remuneration of, or payments to, the person to the extent that (see paragraphs 97 to 106 of this Ruling)
 - the person is an employee of a kind prescribed by the regulations
 - the earnings, remuneration or payments are for work done of a kind prescribed by the regulations, or
 - the earnings, remuneration or payments are otherwise of a kind prescribed by the regulations.

14. This Ruling also details other payments that are not qualifying earnings, including (see paragraphs 80 to 93 of this Ruling):

- payments specifically excluded from the definition of OTE (and are not otherwise included in the definition of qualifying earnings)¹¹
- earnings solely in respect of non-ordinary hours of work
- on-call allowances
- expense allowances and reimbursements
- termination or redundancy payments
- unfair dismissal
- workers' compensation payments in certain situations
- remuneration of a person who holds office as a member of a local government council unless there is in effect a unanimous resolution by the local government council that the remuneration of members will be subject to withholding under paragraph 12-45(1)(e) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).¹²

15. When an employer's payment of qualifying earnings to or for an employee during a financial year exceeds the annual maximum contributions base (MCB), so much of the payment as exceeds the MCB is treated as though it is not qualifying earnings¹³ (see paragraphs 107 to 121 of this Ruling).

Specific issues for guidance

What is included in a person's qualifying earnings

Meaning of 'earnings'

16. The word 'earnings', for the purpose of the definitions of qualifying earnings and OTE, is the remuneration paid to the employee as a reward for the employee's services. For the purposes of the SGAA, this includes payment for services rendered by persons

¹⁰ Subsection 10A(3).

¹¹ See paragraphs (c) and (d) of the definition of OTE in subsection 6(1).

¹² Subsections 12(9A) and 12(10).

¹³ Subsection 10A(6).

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who are employees under the ordinary meaning of that term¹⁴, and also persons who are employees under the extended meaning of that term.¹⁵

'Earnings' includes dividend paid by a liquidator for unpaid earnings

17. Where a dividend is paid out of the assets of a company in liquidation by the liquidator to a former employee of the company in respect of a debt for unpaid earnings owed by that company to the former employee, the dividend is an amount of 'earnings' that will be qualifying earnings to the extent it represents:

- OTE under paragraph 10A(1)(a)
- a specific inclusion under paragraphs 10A(1)(b), (c), (d), or (f).

18. Consideration for the payment of the dividend is the services rendered by the former employee to the company prior to liquidation. The nature of the payment is not altered by the liquidation process.¹⁶ In addition, a liquidator, in applying the company's property in discharging the company's liabilities, is acting as agent for the company.¹⁷

Qualifying earnings includes a person's 'ordinary time earnings'

19. A person's qualifying earnings include amounts that are included in a person's OTE.¹⁸

20. The concept of OTE remains unchanged under Payday Super. Earnings in respect of ordinary hours of work and earnings consisting of over-award payments, shift-loading or commission continue to have the same meaning as they did prior to 1 July 2026.¹⁹

21. OTE is defined under subsection 6(1) as²⁰:

ordinary time earnings, for a person, means all of the person's earnings as an employee made up of:

- (a) earnings in respect of ordinary hours of work; and
- (b) earnings consisting of over-award payments, shift-loading or commission;

other than a lump sum payment of any of the following kinds made to the person on the termination of the person's employment:

- (c) a payment in lieu of unused sick leave;
- (d) an unused annual leave payment, or unused long service leave payment, within the meaning of the *Income Tax Assessment Act 1997*.

22. The SGAA does not define the expression 'earnings in respect of ordinary hours of work' or any terms within that expression.

¹⁴ Per subsection 12(1).

¹⁵ Per subsections 12(2) to 12(10). The earnings of persons classed as employees under subsections 12(2) to 12(10) are specifically included in the definition of qualifying earnings under subsections 10A(1)(c) to 10A(1)(g).

¹⁶ *Deputy Commissioner of Taxation v Applied Design Development Pty Ltd (In Liq)* [2002] FCA 205 at [25–26].

¹⁷ *Re Farrow's Bank Ltd* [1921] 2 Ch 164 at [173–174] and *Linter Textiles Australia Ltd (in liquidation) v Commissioner of Taxation* [2002] FCA 1089 at [12].

¹⁸ Paragraph 10A(1)(a).

¹⁹ Paragraph 1.23 of the Explanatory Memorandum to the Treasury Laws Amendment (Payday Superannuation) Bill 2025 and the Superannuation Guarantee Charge Amendment Bill 2025 (EM).

²⁰ There are some modifications to the wording of the OTE definition as it existed prior to the commencement of Payday Super, however its substantive application is intended to remain unchanged: see paragraph 1.23 of the EM.

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Meaning of ‘ordinary hours of work’

23. An employee’s ‘ordinary hours of work’ are the hours specified as their ordinary hours of work under the relevant award or agreement, or under the combination of such documents, that governs the employee’s conditions of employment.

24. The document need not use the exact expression ‘ordinary hours of work’, but it needs to draw a genuine distinction, for the purposes of the award or agreement, between ordinary hours and other hours. In particular, it would be expected that the other hours are remunerated at a higher rate (typically described as overtime) than the ordinary hours, or otherwise identifiable as a separate component of the total pay in respect of non-ordinary hours.

25. Any hours worked in excess of, or outside the span (if any) of, those specified ordinary hours of work are not part of the employee’s ‘ordinary hours of work’.

26. If the ordinary hours of work are not specified in a relevant award or agreement, the ‘ordinary hours of work’ are the normal, regular, usual or customary hours worked by the employee, as determined in all the circumstances of the case. This is not necessarily the minimum or maximum number of hours worked or required to be worked.

27. In such cases, it may often not be possible or practicable to determine the normal, regular, usual or customary hours of an employee’s work. If so, the actual hours worked should be taken to be the ordinary hours of work.

28. ‘Ordinary hours of work’ are not necessarily limited to hours to be worked between 9:00 am and 5:00 pm, Monday to Friday. They may (depending on the provision in the relevant award or agreement, if any) include hours to be worked at other times, including at night, on weekends or on public holidays.

29. In *Bluescope Steel (AIS) Pty Ltd v Australian Workers’ Union (Bluescope)*²¹, the Full Federal Court agreed with the Commissioner’s interpretation of the terms ‘ordinary time earnings’ and ‘ordinary hours of work’, within the meaning of subsection 6(1).

30. In particular, Allsop CJ stated at [56] and [57] of the *Bluescope* decision:

... The meaning that best reflects these considerations and the text, context, purpose and history of the provision is earnings in respects of ordinary or standard hours of work at ordinary rates of pay as provided for in a relevant industrial instrument, or contract of employment, but if such does not exist (and there is no distinction between ordinary or standard hours and other hours by reference to rates of pay) earnings in respect of the hours that the employee has agreed to work or, if different, the hours usually or ordinarily worked.

This meaning adopts as central (to the extent that it is present) the distinction long familiar in the industrial and employment context, and widely understood, between earnings for ordinary time and earnings for an additional or greater number of hours beyond ordinary or standard hours. If in a particular context such distinction does not exist in the remuneration for the labour provided, the required comprehensiveness and flexibility of the meaning will fix upon the hours agreed to be worked, or the hours normally worked if different.

31. And further at [101]:

... The phrase “ordinary hours of work” has a statutory meaning in the definition by reference to standard hours at ordinary rates in contradistinction to additional hours at higher rates. That distinction is found as the framework for the construction of the annualised and aggregate salaries in the industrial instruments. The additional hours, as the overtime, are required in the arrangement, and the employees are paid therefore at a higher rate than the base salary. The same applies to public holidays. The superannuation

²¹ *Bluescope Steel (AIS) Pty Ltd v Australian Workers’ Union* [2019] FCAFC 84.

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legislation requires a focus (if the distinction is made in the instruments as it is here) upon the standard or ordinary hours at ordinary rates ...

Earnings 'in respect of ordinary hours of work' means all earnings other than earnings that are solely in respect of non-ordinary hours of work

32. All amounts of earnings in respect of employment are in respect of the employee's ordinary hours of work unless they are remuneration for working overtime hours, or are otherwise referable only to overtime or to other hours that are not ordinary hours of work. That is, earnings 'in respect of ordinary hours of work' are all earnings other than earnings that are *solely* in respect of non-ordinary hours of work.²²

33. For the purpose of identifying whether a particular earning is in respect of ordinary hours of work, all that is required is to establish some discernible and rational link between the earnings and a requirement to provide service during 'ordinary hours of work'. There is no requirement that the earnings must have an *exclusive* connection to services provided during 'ordinary hours of work'.²³

34. There is also no such thing as earnings that are merely in respect of employment generally and are not OTE because they are not in respect of any particular hours of work.

35. An award or agreement may itself have a definition of 'ordinary time earnings' that purports to apply for superannuation purposes. However, the central question posed by the definition of OTE in the SGAA is what amounts are 'earnings in respect of ordinary hours of work'. This could in some cases be a different amount from any purported amount of 'OTE' in the award or agreement. As mentioned in paragraph 23 of this Ruling, we accept that 'ordinary hours of work' are as determined by the relevant award or agreement, but that does not imply that OTE *itself* is necessarily as determined by the award or agreement.

36. We do not consider that the services or attendance of an employee specifically during certain hours of work is necessary for the earnings to be 'in respect of ordinary hours' and therefore OTE. Our view is that the expression 'in respect of ordinary hours of work' was intended to ensure that overtime payments, and related amounts, were excluded from the earnings base. It was not intended to exclude amounts paid at a worker's ordinary time rate solely on the ground that they were not earned as a direct result of actually working particular hours in ordinary time.

37. For example, during public holidays an employee does not provide services or attend work, and the entitlement to the payment for the holiday has not accrued during ordinary hours actually worked. However, the payment the employee receives is 'in respect of ordinary hours of work' because it is earnings received at their ordinary rate of pay paid for a period which would normally be their ordinary working hours.

Payments specifically included in the definition of 'ordinary time earnings'

38. Earnings consisting of over-award payments, shift-loading or commission are specifically included in paragraph (b) of the definition of OTE in subsection 6(1).

39. We consider that the specific inclusion of over-award payments, shift-loadings and commissions in OTE was intended to avoid doubt and to prevent any possible argument

²² See [38] and [101] of *Bluescope*. See also the Fair Work Commission decision of *Jason McCosker; Tony Johnston; Tennessee Berry; Alexander Brown; Patrick Gomes v Bindaree Beef Pty Ltd* [2021] FWC 2632 (*Bindaree Beef*) at [49–52] and [57–62].

²³ *Bindaree Beef* [2021] FWC 2632 at [49–62].

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that, by their very nature, these sorts of earnings could never be in respect of ordinary hours. We do not, however, read the definition so literally as to compel the odd result that these amounts are always OTE even where they are clearly referable only to overtime hours worked.

40. Under Payday Super, all payments of commission will always be qualifying earnings, even where any part of the commission is not considered OTE, as payments of commission (the whole amount) are a specific inclusion under paragraph 10A(1)(b) of the definition of qualifying earnings.

Over-award payments

41. The term ‘over-award payments’ is not defined in the SGAA. The *Macquarie Dictionary*²⁴ defines ‘over-award’ as:

... of or relating to a rate of pay which is higher than that awarded by an industrial tribunal for a particular work classification.

42. An over-award payment is the component of a payment in excess of an award entitlement. It is a payment made above the minimum rate specified in the relevant award as part of a worker’s remuneration. This type of payment is specifically included in paragraph (b) of the definition of OTE in subsection 6(1).

43. Our view is that the specific inclusion of these payments does not apply to over-award payments that are specifically referable to hours worked that are not ordinary time hours. For example, an employer’s policy may be to offer a higher rate of overtime pay for some overtime hours worked than the penalty rate required by an award. Even though technically over-award payments, such additional payments would not be OTE under paragraph (b) of the definition of OTE in subsection 6(1).

Shift-loading

44. The *Macquarie Dictionary*²⁵ defines ‘shift loading’ as:

... an allowance paid to employees on shiftwork as compensation for their having to work outside the usual span of hours fixed for day workers.

45. A payment in addition to the ordinary rate of pay made to a shift worker by reason of compensation for working outside the span of hours which is designated for day workers, for example, early morning, late at night, weekends or public holidays, is a shift-loading. Such payments are included under paragraph (b) in the definition of OTE in subsection 6(1).

46. Shift-loadings payable on ordinary hours of work must be distinguished from overtime payments under awards and agreements. Often these are mutually exclusive under awards and agreements, but if an employee is entitled to a shift-loading solely in respect of hours other than ordinary hours of work, it is our view that such an amount of shift-loading would not be OTE.

²⁴ Pan Macmillan Australia (2026) *Macquarie Dictionary Online*, www.macquariedictionary.com.au, accessed 2 March 2026.

²⁵ Pan Macmillan Australia (2026) *Macquarie Dictionary Online*, www.macquariedictionary.com.au, accessed 2 March 2026.

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Commission

47. A commission is a payment made to an employee such as a salesperson on the basis of the volume of sales they achieve or other similar criteria.

48. The Administrative Appeals Tribunal in *Prushka Fast Debt Recovery Pty Ltd and Commissioner of Taxation*²⁶ observed:

... The word *commission* is not defined in the SGA Act. Its ordinary meaning, in the context in which it is used in the SGA Act is: *pro-rata remuneration for work done as agent* (the Shorter Oxford English Dictionary). I accept therefore that payments made to an employee on the basis of percentage of sales could properly be described as a commission.

49. Commissions will always be qualifying earnings, whether they are paid in respect of ordinary hours of work or work carried on outside of an employee's ordinary hours, under either under paragraph (b) of the definition of OTE in subsection 6(1) or paragraph (1)(b) of the definition of qualifying earnings under section 10A. The amount of the commission should be included in full but should not be double counted in working out the employee's qualifying earnings.²⁷

Certain other kinds of payments that are ordinary time earnings

Allowances and loadings

50. Many employees receive various additional payments that are described as 'allowances' or 'loadings' and that are paid to employees to recognise or compensate for certain conditions relating to their employment. Examples include a:

- 'site allowance' paid fortnightly at a flat rate in acknowledgment of the displacement an employee undergoes when a job requires him or her to work in a remote location
- 'casual loading' of 20% of the basic ordinary time rate of pay paid to a casual worker in lieu of any fixed, regular minimum hours of work and of paid leave entitlements
- 'dirt allowance' paid as a flat rate in acknowledgment of the conditions in which the work is undertaken, and
- 'freezer allowance' paid as an extra amount per hour to employees, such as some supermarket employees, who perform most of their duties in cold storage facilities.

51. These kinds of payments are OTE except to the extent that they relate solely to hours of work other than ordinary hours of work: see paragraphs 32 to 37 of this Ruling.

52. Payments of a predetermined amount to offset or reimburse particular expenses, even when labelled as 'allowances', are not OTE and will not be included in a person's qualifying earnings. Examples of such payments include:

- expense allowances – that is, those allowances paid to an employee with a reasonable expectation that the employee will fully expend the money in the course of providing services
- a reimbursement that compensates an employee for an expense they have incurred on behalf of the employer

²⁶ [2008] AATA 762 at [53].

²⁷ Subsection 10A(2). See also paragraph 1.26 of the EM.

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- petty cash provided to an employee to purchase goods for the employer.

Bonuses

53. Additional earnings received as a reward for good performance, and other like 'bonus' payments, are OTE in most cases. There are 2 very limited exceptions:

- where there is clear evidence that the payment was made to the employee on a personal basis and not by reason of their services as an employee
- a discrete and clearly identifiable bonus payment related solely to work performed entirely outside ordinary hours – for example, an employer may pay a bonus specifically to recognise a special project that an employee contributed to *entirely* in non-ordinary hours.

54. There would need to be clear evidence that one of these exceptions was the sole basis for the payment. The more common case, of a lump sum performance bonus that is at least partly referable to results achieved in ordinary hours of work, is wholly OTE.

55. 'Sign-on' bonuses to new employees are also OTE in most cases. Only in limited situations would we accept that such a payment is not OTE, as where the payment is clearly referable to a separate restrictive covenant entered into by the employee.²⁸

Piece-rates

56. Employees may receive their remuneration calculated on a piece-rate basis, that is, based on completion of the number of units or items rather than on the number of hours worked. For example, payments could be on the number of kilometres driven, the number of buckets filled with fruit, or the number of items of clothing completed.

57. Unless an employee is subject to an award or agreement that specifies the employee's ordinary hours of work, all remuneration on a piece-rate basis is included in an employee's OTE. As the number of units or items completed is the basis for calculating the payment, the hours actually worked that resulted in the completion of the units or items are the employee's 'ordinary hours of work'.

58. If the employee is subject to an award or agreement that specifies their ordinary hours, the employee's earnings in respect of those hours must be determined having regard to the relevant provisions of the award or agreement.

Paid leave and holiday pay

59. Although leave payments are not paid for actual attendance at work or for services, subject to the exclusions mentioned at paragraph 62 of this Ruling, payments that an employee receives, at or below their normal rate of pay for ordinary hours of work, in respect of periods of paid leave is simply a continuation of their ordinary pay. It is OTE and is included in qualifying earnings. It does not matter whether the entitlement to take the paid leave accrued gradually over time, arose in a specified circumstance or following a specified event, or was simply granted to the employee in the exercise of the employer's discretion.

²⁸ See Taxation Ruling IT 2307 *Income Tax: Assessability of lump sum payment made under contract to play football: covenant in contract that taxpayer not engage in competitive footrinning during term of contract*, and paragraph 21 of Taxation Ruling TR 1999/17 *Income tax: sportspeople - receipts and other benefits obtained from involvement in sport*.

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60. Leave payments that an employee receives while on annual leave, long service leave or sick leave is in respect of their ordinary hours of work and is OTE.

61. Similarly, payments received at the ordinary time rate in respect of public holidays, rostered days off (RDO), time off in lieu (TOIL) and the like, are OTE. Payments of cashed-out RDOs to the employee while the employment relationship is continuing, where the entitlement to the accrued RDO hours originates from ordinary hours, is also OTE. However, payments on termination of employment for unused RDOs or TOIL are not OTE.

62. Payments made while a worker is on paid parental leave or other kinds of ancillary leave, and 'top up payments' made while an employee is on jury service, defence reserve service and the like, are not OTE. These types of leave payments are specific exclusions from qualifying earnings under section 12 of the *Superannuation Guarantee (Administration) Regulations 2018* (SGAR).²⁹

63. Casual employees, including part-time casuals, are usually not entitled to paid leave or paid public holidays.³⁰ Instead they receive a higher rate of pay (a 'casual loading') which is referable to their ordinary hours of work and therefore OTE, unless paid in respect of overtime hours worked.

64. By way of exception, an annual leave loading that is payable under some awards and industrial agreements is not OTE if the character of the amount is compensation for a foregone opportunity to work overtime while an employee consumes a right to annual leave and is therefore wholly referable to hours of work that do not have the character of 'ordinary hours of work': see paragraph 32 of this Ruling.

65. Lump sum arrears payments of unused leave or earnings otherwise than on termination of employment are also OTE.

Payments for unused long service leave entitlements while still employed

66. An employer may pay long service leave entitlements as a lump sum in lieu of leave to an employee while they remain in that same employment.

67. Although unused long service leave paid as a lump sum on termination is specifically excluded from OTE by its definition in subsection 6(1), if a payment for unused long service leave occurs while the employee remains employed, this amount is paid in connection with the employee's ordinary hours in the same way as any other long service leave payment. Therefore, the payment of unused long service leave entitlements while still employed is included in OTE.

Payments in lieu of notice

68. An employee may be entitled to a period of notice before the employer's termination of their employment takes effect. Awards and agreements often provide that, instead of giving this notice, the employer may simply pay an amount equivalent to the ordinary time rate of earnings that the employee would have earned during the notice period. Such payments are OTE.

²⁹ See paragraph 100 of this Ruling.

³⁰ However, casual workers who have worked for the same employer for a long time are frequently given some entitlements by their employer.

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Workers' compensation payments – employee required to work

69. Any workers' compensation payments (including top-up payments) received by an injured employee for the hours the employee actually performs work, or attends work as required, form part of an employee's OTE.³¹

Payments in settlement of a dispute

70. If unpaid earnings are recovered by way of a settlement of a debt via court order, out-of-court settlement or negotiated settlement, and that settlement contains an identifiable and quantifiable amount of unpaid OTE, that amount retains its character as OTE for SGAA purposes. However, when the amount is undissected and there is no discernible OTE component, the whole amount will not count towards a person's qualifying earnings.

Directors' fees

71. All fees paid to a company director are earnings in respect of the director's ordinary hours of work and are OTE. Such payments would also typically fall within the definition of qualifying earnings under paragraph 10A(1)(c).

Other payments specifically included in the definition of qualifying earnings

72. Subsections 10A(1)(b) to (h) list other payments that are qualifying earnings. These include commission payments, payments to a person who falls within the extended meaning of employee under section 12 of the SGAA and payments that are part of a salary sacrifice arrangement.

Commission payments

73. All commission payments³² are qualifying earnings under paragraph 10A(1)(b). This includes any part of such payments that are referable solely to work done outside the employee's ordinary hours and which therefore do not fall under the definition of OTE.

Payments to body corporate executives

74. Payments for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate under subsection 12(2)³³ are qualifying earnings.³⁴

³¹ See paragraph 92 of this Ruling for scenarios where the employee is *not* required to work.

³² See paragraphs 47 to 49 of this Ruling.

³³ Paragraphs 91 and 92 of TR 2023/4 discuss members of executive bodies of bodies corporate in detail.

³⁴ Paragraph 10A(1)(c).

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Payments under contracts wholly or principally for labour

75. Payments under a contract that is wholly or principally for the labour of a person as referred to in subsection 12(3)³⁵, that are in respect of the person's labour under the contract, are qualifying earnings.³⁶

Remuneration to parliamentarians

76. Remuneration of a member of the Parliament of the Commonwealth or a state or the Legislative Assembly of a territory³⁷ is qualifying earnings.³⁸

Payments to persons covered by subsection 12(8)

77. All payments to a person for work referred to in subsection 12(8) are qualifying earnings.³⁹ This includes:

- payments to persons who perform, present, participate in or provide services in connection with the performance or presentation of any music, play, dance, entertainment, sport, display or promotional activity involving the exercise of intellectual, artistic, musical, physical or other personal skills, and
- payments to persons who perform or provide services in connection with the making of any film, tape or disc or of any television or radio broadcast.⁴⁰

Remuneration to public office holders

78. Remuneration of the person in circumstances referred to in subsections 12(9) and (10) are qualifying earnings.⁴¹ This relates to remuneration of a person who:

- holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a state or of a territory
- is otherwise in the service of the Commonwealth, of a state or of a territory, or
- is a member of a local governing body where there is in effect a unanimous resolution⁴² by the body that the remuneration of members of the body will

³⁵ When a person is considered to be an employee under subsection 12(3) is considered in detail in paragraphs 93 to 114 of TR 2023/4.

³⁶ Paragraph 10A(1)(d). See also Superannuation Guarantee Determination SGD 96/2 *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?*

³⁷ Employees under subsections 12(4) to 12(7). Paragraphs 115 to 116 of TR 2023/4 discuss members of parliaments and legislative assemblies in detail.

³⁸ Paragraph 10A(1)(e).

³⁹ Paragraph 10A(1)(f).

⁴⁰ Employees under subsection 12(8) are discussed in detail in paragraphs 117 to 131 of TR 2023/4. See also Superannuation Guarantee Ruling SGR 2009/1 *Superannuation guarantee: payments made to sportspersons*.

⁴¹ Paragraph 10(1)(g).

⁴² Made under section 446-5 of Schedule 1 to the TAA.

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be subject to withholding under paragraph 12-45(1)(e) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).⁴³

Amounts of a person's earnings sacrificed under a salary sacrifice arrangement

79. The definition of qualifying earnings includes an amount of a person's earnings equal to the amount of qualifying earnings that were reduced under a salary sacrifice arrangement in return for the making of a superannuation contribution to the person's complying superannuation fund or RSA by the person's employer ('sacrificed contribution'⁴⁴ amount).⁴⁵

Exclusions from a person's qualifying earnings

Exclusions from a person's ordinary time earnings

80. The payments outlined in paragraphs 81 to 86 of this Ruling are generally not OTE. They are also not a payment specifically included in the definition of qualifying earnings under paragraphs 10A(1)(b) to 10A(1)(h). They are therefore not qualifying earnings when they are not OTE.

Payments specifically excluded from the definition of ordinary time earnings in subsection 6(1)

81. Specifically excluded from the definition of OTE in subsection 6(1) is a lump sum paid to the person on the termination of the person's employment that is:

- a payment in lieu of unused sick leave, or
- an unused annual leave payment, or unused long service leave payment within the meaning of the ITAA 1997.

Certain other kinds of payments that are not ordinary time earnings

Earnings solely in respect of non-ordinary hours of work

82. Payments for work performed during hours outside an employee's ordinary hours of work (for example, overtime payments) are not OTE.

83. This is so whether the payments are calculated at an hourly rate, or the employee gets a specific loading, or an annualised or lump sum component of a total salary package, that is expressly referable to overtime hours as remuneration for overtime hours worked.

84. However, some employees, particularly some managers and professionals, receive a single undissected annual salary within a remuneration package that recognises in a non-specific way that the employee may often be expected to work more than the ordinary hours of work prescribed. The whole amount of salary payable under such a package is OTE, unless overtime amounts or other amounts referable solely to non-ordinary hours of work are distinctly identifiable.

⁴³ Paragraphs 132 to 135 of TR 2023/4 discuss public office holders under subsections 12(9) and (10) in detail. Taxation Ruling TR 2002/21 *Income tax: Pay As You Go (PAYG) Withholding from salary, wages, commissions, bonuses, or allowances paid to office holders* also provides guidance on the operation of paragraph 12-45(1)(e) of Schedule 1 to the TAA.

⁴⁴ As defined under subsection 6(1).

⁴⁵ Paragraph 10A(1)(h).

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On-call allowances

85. An on-call or availability allowance is a payment to an employee for making themselves available at certain times to be called in to work if needed. This entitlement is separate from the earnings they will receive if actually called in. If the allowance is paid in respect of hours that the employee would not otherwise be working, that is, paid solely in respect of overtime or non-ordinary hours, these payments are not OTE.

86. In some cases, on-call allowances are paid as a loading on the salary of an employee received for ordinary hours of work. For example, some doctors employed by hospitals are paid an extra hourly allowance, while carrying out routine duties in ordinary hours of work, to make themselves available to perform urgent surgery if required. Payments of this kind are OTE.

Other kinds of payments that are not qualifying earnings

Expense allowances, and payments and reimbursements, to employees for expenses actually incurred

87. Expense allowances, that is, those allowances paid to an employee with a reasonable expectation that the employee will fully expend the money in the course of providing services, are not qualifying earnings. The expense allowance is not given for the services of the employee, but rather in recognition of the expenditure that the employee will incur in the course of providing their services.

88. A reimbursement that compensates an employee for an expense they have incurred on behalf of the employer is also not qualifying earnings. A payment is a reimbursement if 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 for expenses lends weight to a presumption that a payment is a reimbursement rather than an allowance. A reimbursement is not provided as a reward for the provision of services by the person.

89. 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 and it is not qualifying earnings.

Termination or redundancy payments

90. Redundancy payments made on termination of employment are not a reward for services rendered by an employee, even if part of the payment is calculated by reference to the employee's period of service with the employer. They are payments to compensate the employee for the loss of their job; not a reward for their services. They are not qualifying earnings.

Unfair dismissal

91. For similar reasons to that explained in paragraph 90 of this Ruling in relation to termination or redundancy payments, payments by way of compensation for unfair dismissal are not qualifying earnings.

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Workers' compensation payments – employee not required to work

92. If the employee's employment has been terminated, or if the employee is paid workers' compensation for hours not worked (or is not required to work due to incapacity), it cannot be said that the payment is a reward for the services of the employee to the employer and the payment will not be qualifying earnings.

Local government

93. Under subsection 12(9A), and subject to subsection 12(10), a person who holds office as a member of a local government council is not an employee of the council. As such, remuneration of a person who holds office as a member of a local government council is not qualifying earnings unless there is in effect a unanimous resolution by the local government council that the remuneration of members will be subject to withholding under paragraph 12-45(1)(e) of Schedule 1 to the TAA.

Specific exclusions from qualifying earnings under subsection 10A(3)

94. Under subsection 10A(3), a person's qualifying earnings do not include any of the following:

- (a) a payment of an amount that represents the reversal of all or part of a sacrificed contribution;
- (b) earnings or remuneration of, or payments to, the person to the extent that:
 - (i) the person is an employee of a kind prescribed by the regulations; or
 - (ii) the earnings, remuneration or payments are for work done of a kind prescribed by the regulations; or
 - (iii) the earnings, remuneration or payments are otherwise of a kind prescribed by the regulations.

Reversal of all or part of a sacrificed contribution

95. In some circumstances, a sacrificed contribution may be reversed in full or in part. Under paragraph 10A(3)(a), any amount that initially constituted a part of a sacrificed contribution that is subsequently paid to the employee as part of a reversal of the salary sacrifice arrangement, is excluded from qualifying earnings. This is because the reversed amount of the sacrificed contribution would have already been counted as an amount of qualifying earnings in a previous QE day. The exclusion under paragraph 10A(3)(a) is to prevent an amount subject to a salary sacrifice arrangement being counted more than once where a reversal of the sacrificed contribution occurs.

96. A reversal of a sacrificed contribution includes a payment made on or after 1 July 2026 that represents the reversal of all or part of a contribution that was a sacrificed contribution made before 1 July 2026.⁴⁶

⁴⁶ Item 184 of Part 3 of the *Treasury Laws Amendment (Payday Superannuation) Act 2025*. See also paragraphs 40 and 41 of draft Law Companion Ruling LCR 2026/D4 *Payday Super: application and transitional provisions*.

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Exclusions prescribed by the regulations

97. A person's qualifying earnings do not include amounts that are prescribed exclusions under the SGAR (even if such amounts would ordinarily constitute an amount of qualifying earnings under subsection 10A(1)):

- earnings, remuneration, or payments to certain kinds of employees⁴⁷
- earnings, remuneration or payments for certain kinds of work⁴⁸, and
- certain kind of earnings, remuneration, or payments.⁴⁹

98. There have not yet been any prescribed exclusions for kinds of work, under subparagraph 10A(3)(b)(ii).

Prescribed exclusions – kinds of employees

99. For the purposes of subparagraph 10A(3)(b)(i), section 11 of the SGAR prescribes the following categories of employees whose earnings are excluded from qualifying earnings:

- an employee who holds certain kinds of visas or entry permits under the *Migration Act 1958* and the *Migration Regulations 1994*, and who also meets certain other criteria relating to their employment⁵⁰, and
- a part-time employee who is under 18 years of age.⁵¹

Prescribed exclusions – kinds of earnings, remuneration or payments

100. For the purposes of subparagraph 10A(3)(b)(iii), section 12 of the SGAR prescribes the following earnings or remuneration of, or payments to, a person, are excluded from the person's qualifying earnings:

- payments to the person for a period of parental leave⁵²
- payments to the person, where the person is engaged in an 'eligible community service activity'⁵³ (for example, jury service), by the person's usual employer while the person is absent from their usual employment⁵⁴
- payments to the person, who is undertaking service with the Australian Defence Force, by the person's usual employer (and not the Australian Defence Force) while the person is absent from their usual employment⁵⁵

⁴⁷ Subparagraph 10A(3)(b)(i) and section 11 of the SGAR.

⁴⁸ Subparagraph 10A(3)(b)(ii).

⁴⁹ Subparagraph 10A(3)(b)(iii) and section 12 of the SGAR.

⁵⁰ Paragraphs 11(a) to (e) of the SGAR.

⁵¹ Paragraph 11(f) of the SGAR.

⁵² Paragraph 12(1)(a) of the SGAR. Section 5 of the SGAR contains an inclusive definition of 'parental leave' for relevant purposes.

⁵³ Section 5 of the SGAR states that 'eligible community service activity' has the same meaning as in subsection 109(1) of the *Fair Work Act 2009*.

⁵⁴ Paragraph 12(1)(b) of the SGAR. It is noted that paragraph 12(1)(b) of the SGAR does not apply to payments where the person engages in 'eligible community service activity' in the capacity of an employee of the employer that carries on the activity: see subsection 12(2) of the SGAR.

⁵⁵ Paragraph 12(1)(c) of the SGAR.

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- if a scheduled international social security agreement⁵⁶ provides that an employer to which the payments to the person relates is not subject to the SGAA in relation to the work for which the payments to the person are paid, the payments to the person so paid⁵⁷
- payments to the person paid on or after 1 November 2022 and funded by a payment made to the person's employer under the Commonwealth program known as the Aged Care Registered Nurses' Payment to reward clinical skills and leadership⁵⁸
- payments to the person that are fringe benefits (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA))⁵⁹
- payments to the person, if not a resident of Australia, for work done outside of Australia (except to the extent that the payments to the person relate to employment covered by a certificate under section 15C of the SGAA)⁶⁰
- payments to the person, if not a resident of Australia, by their employer, for work done in the Joint Petroleum Development Area (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*)⁶¹
- if the person is a resident of Australia and the employer is not a resident of Australia, payments to the person by their employer for work done outside Australia⁶²
- pay and allowances for members of the Australian Defence Reserve Forces for service other than continuous full-time service⁶³
- payments to the person under a contract for the employment of the person, for not more than 30 hours per week, for work that is wholly or principally of a domestic or private nature.⁶⁴

Fringe benefits and other non-cash benefits

101. In addition to fringe benefits, which are specifically excluded from qualifying earnings, the Commissioner takes the view that other 'benefits', within the meaning of the FBTAA, given by employers to employees that are neither fringe benefits nor salary or wages within the meaning of that Act are also excluded from qualifying earnings for SGAA purposes. For example:

- superannuation contributions made by an employer to a complying superannuation fund for the benefit of an employee, including sacrificed

⁵⁶ Within the meaning of subsection 5(1) of the *Social Security (International Agreements) Act 1999* (see section 5 of the SGAR (definition of 'scheduled international social security agreement')).

⁵⁷ Paragraph 12(1)(d) of the SGAR.

⁵⁸ Paragraph 12(1)(e) of the SGAR.

⁵⁹ Paragraph 12(1)(f) of the SGAR.

⁶⁰ Subparagraph 12(1)(g)(i) of the SGAR.

⁶¹ Subparagraph 12(1)(g)(ii) of the SGAR.

⁶² Paragraph 12(1)(h) of the SGAR.

⁶³ Paragraph 12(1)(i) of the SGAR.

⁶⁴ Paragraph 12(1)(j) of the SGAR. Work of a private or domestic nature means work relating personally to the individual making payment for the work or work relating to the person's home or household affairs: see paragraphs 136 to 141 of TR 2023/4.

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- contributions⁶⁵ as well as the minimum contributions an employer needs to make in order to avoid liability to the SG charge under the SGAA, and
- the acquisition of a share, or of a right to acquire a share, under an employee share scheme (within the meaning of Division 83A of the ITAA 1997).

'Work done outside Australia'

102. Section 4 of the SGAA extends the application of the SGAA to every external territory in the definition of Australia. 'Australia', when used in a geographical sense such as in the context of the phrase 'work done outside Australia', is defined in subsection 6(1) as having the same meaning as in the ITAA 1997.

103. The ITAA 1997, in section 960-505, defines 'Australia' as including Norfolk Island, the Coral Sea Islands Territory, the Territory of Ashmore and Cartier Islands, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the Territory of Heard Island and the McDonald Islands. 'Australia' also includes the 'coastal sea' of Australia and each of those Territories.⁶⁶ It also includes an offshore area for the purposes of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.⁶⁷

104. Work done outside those areas is 'work done outside of Australia' for the purpose of section 12 of the SGAR.⁶⁸

Circumstances when certain exclusions do not apply

105. Paragraph 12(1)(b) of the SGAR does not apply to payments to the person where the person engages in the eligible community service activity in the capacity of an employee of the employer that carries on the activity.⁶⁹

106. Additionally, the exclusions under paragraphs 12(1)(b) and (c) of the SGAR do not apply to a payment to the person which relates to annual leave, sick leave or long service leave that is paid in relation to the period during which the person is engaged in the relevant activity or performing the relevant work.⁷⁰

Payments of qualifying earnings to or for an employee that are in excess of the maximum contributions base

107. The MCB is used to set an upper limit on the minimum amount of SG contributions payable by an employer for an employee in order to avoid liability to the SG charge. For this purpose, under Payday Super, the MCB operates as an annual limit on qualifying earnings.⁷¹

⁶⁵ As defined by subsection 6(1). However, the reduction in amounts that would be qualifying earnings under paragraphs 10A(1)(a) to (g) in return for the sacrificed contributions will be qualifying earnings under paragraph 10A(1)(h).

⁶⁶ Due to the operation of section 15B of the *Acts Interpretation Act 1901*.

⁶⁷ Subsection 960-505(2) of the ITAA 1997.

⁶⁸ Relevant for the purpose of paragraphs 12(1)(g) and (h) of the SGAR.

⁶⁹ Subsection 12(2) of the SGAR.

⁷⁰ Subsection 12(3) of the SGAR.

⁷¹ Prior to 1 July 2026, the MCB operated as a quarterly limit on OTE.

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108. The MCB⁷², for a payment of qualifying earnings to or for an employee, is calculated as follows (rounded down to the nearest multiple of \$10):

$$\text{Concessional contributions cap} \times \frac{100}{\text{Charge percentage}}$$

Where:

- Charge percentage is 12 (specified under subsection 17A(2))
- Concessional contributions cap is the basic concessional contributions cap (within the meaning of the ITAA 1997)⁷³ for the financial year in which the payment is made.

109. Where a payment of qualifying earnings results in a portion of that amount exceeding the MCB, the amount of qualifying earnings that is taken into account is the amount that does not include the excess (that is, the excess amount is disregarded).⁷⁴

110. If an earlier payment during the financial year has already caused the MCB to be exceeded, any further payments of qualifying earnings for the rest of the financial year will be treated as though they are equal to nil.⁷⁵

Maximum contributions base and exemption certificates

111. If an employer shortfall exemption certificate⁷⁶ is in force for an employee in relation to an employer for a QE day, the employee is treated as having already reached their MCB for that employer for the financial year.⁷⁷ This means the employee's qualifying earnings on a QE day will be treated as if they are nil for the purposes of working out the individual SG amount, resulting in the individual SG amount for that employee and that QE day being nil. Accordingly, the employer does not have to pay any SG contributions for the employee for that QE day in order to avoid liability to the SG charge.

112. Employees with multiple employers during the financial year may inadvertently breach their annual concessional contributions cap if each of their employers were to pay the minimum SG contributions on their behalf. To avoid having to pay additional tax, employees may apply in the approved form to the Commissioner for an employer shortfall exemption certificate for a specified employer of the applicant at the time the application is made and for a specified period, ending at the end of a specified financial year. Employees can make the application at any time once the employment relationship exists, but it must be made at least 30 days before the commencement of the specified period. That is, the specified period cannot specify a date that is the application date, or any date that is within 30 days of the application date.⁷⁸

⁷² Subsection 10A(5).

⁷³ Section 995-1 of the ITAA 1997 defines the 'basic concessional contributions cap' as the concessional contributions cap under subsection 291-20(2) of the ITAA 1997, disregarding any increase under subsection 291-20(3) of the ITAA 1997. The concessional contributions cap is indexed in line with average weekly OTE each income year (sections 960-265 and 960-285 of the ITAA 1997), which will have a consequential impact on the calculation of the MCB.

⁷⁴ Paragraph 10A(6)(c).

⁷⁵ Paragraph 10A(6)(d).

⁷⁶ Subsection 6(1) (definition of 'employer shortfall exemption certificate') and section 17C.

⁷⁷ Section 17B.

⁷⁸ Subsection 17C(4).

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113. Before issuing the employer shortfall exemption certificate, the Commissioner must be satisfied that⁷⁹:

- if the certificate is not issued, the employee is likely to have excess concessional contributions for the financial year (whether or not issuing the certificate would prevent that result)
- if the certificate is issued, at least one other employer of the employee is likely to have an individual SG amount for them for a QE day in that financial year which is greater than nil, and
- it is appropriate in the circumstances to issue the certificate.

114. Broadly, the effect of the first 2 requirements is to limit the availability of employer shortfall exemption certificates to employees with multiple employers in a financial year that are expected to be in receipt of substantial superannuation contributions. It does not matter whether the employee has multiple employers at the same time or in succession. All that is required is an employer other than the employer in relation to which the exemption certificate is sought must be likely to have an individual SG amount greater than nil for the employee for a QE day in the relevant financial year.

115. In considering the matters referred to in paragraph 113 of this Ruling, the Commissioner:

- in relation to the first 2 requirements – *must* have regard to any other employer shortfall exemption certificate that has been issued, or is proposed to be issued, to the employee for the same financial year⁸⁰, and
- in relation to the final requirement that issuing the certificate is appropriate in the circumstances – *may* have regard to the effect that issuing the certificate is likely to have on the employee's concessional contributions for the financial year, and any other matters that the Commissioner considers relevant.⁸¹

116. 'Any other matters' may include whether a certificate would result in contributions being reduced by a substantially larger amount than necessary, or whether the individual has engaged in behaviour that artificially enables them to apply for a certificate.

117. The Commissioner must give written notice of the decision about whether to issue an employer shortfall exemption certificate to the employee.⁸² If the application is approved, the Commissioner will issue the exemption certificate specifying the employer, period and financial year it covers.⁸³ The Commissioner is also required to provide notice to the employer covered by the certificate.⁸⁴

118. An employer shortfall exemption certificate applies for QE days occurring during the period specified in the certificate, even if the certificate is not issued until after that time.⁸⁵

⁷⁹ Subsection 17C(2).

⁸⁰ Paragraph 17C(3)(a).

⁸¹ Paragraph 17C(3)(b).

⁸² Paragraph 17D(1)(a).

⁸³ Subsection 17C(1). Note that the employer shortfall exemption certificate only applies for the purposes of the SGAA.

⁸⁴ Paragraph 17D(1)(b).

⁸⁵ Under paragraph 17C(7)(a), the employer shortfall exemption certificate may be issued after the first day of the period specified in the notice.

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119. However, if the Commissioner does not give written notice of a decision on the application within 60 days starting on the day the application was made, the Commissioner is treated as having decided not to issue a certificate.⁸⁶

120. A person who is dissatisfied with a decision of the Commissioner to issue, or not issue, an employer shortfall exemption certificate may object against the decision in the manner set out in Part IVC of the TAA.⁸⁷

121. The Commissioner may not vary or revoke an employer shortfall exemption certificate.⁸⁸

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⁸⁶ Subsection 17D(3).

⁸⁷ Subsection 17C(5).

⁸⁸ Subsection 17C(6).

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Appendix 1 – Examples

① Relying on this Appendix

This Appendix provides examples to help you understand the views outlined in this Ruling.

If this Appendix applies to you and you rely on it reasonably and in good faith, the fact that you acted in accordance with this Appendix would be a relevant factor in your favour in the Commissioner's exercise of any discretion in regard to the imposition of penalties or interest.

Examples relating to ordinary time earnings

122. For Examples 1 to 25 of this Ruling, assume that none of the payments in question fall within the specific inclusions under paragraphs 10A(1)(b) to (h) in the definition of qualifying earnings.

Awards and agreements

Example 1 – straightforward overtime situation

123. *Grace is employed under an award which stipulates that ordinary hours shall not exceed 38 hours per week. The award also states that all time worked in excess of the ordinary hours for the week is overtime and is to be paid at a rate of time-and-a-half for the first 3 hours and double time thereafter.*

124. *Grace's employer requires her to work one Saturday morning for 3 additional hours, resulting in her completing 41 hours work for that particular week.*

125. *For this week in question, the 38 hours Grace worked during the weekdays are her 'ordinary hours of work', because that is what the award provides.*

126. *The 3 additional hours worked on the Saturday are not 'ordinary hours of work'.*

127. *The wage payment to Grace for 38 hours of work is 'earnings in respect of ordinary hours of work' and is OTE. It is therefore included in Grace's qualifying earnings.*

128. *The wage payment for the additional 3 hours overtime is not 'earnings in respect of ordinary hours of work' and is not OTE. It is not included in Grace's qualifying earnings.*

129. *It would make no difference how frequently or regularly Grace worked overtime hours. Payments for all such work cannot be OTE because they are not in respect of ordinary hours as defined by the relevant award.*

Example 2 – ordinary hours of work and overtime hours determined by agreement prevailing over award

130. *Ennio is employed under a collective agreement which incorporates, by reference, terms from an award. To the extent of any inconsistency between the agreement and the award, the agreement prevails.*

131. *The award provides that the ordinary hours are an average of 38 hours per week and gives an employer the right to require an employee to work reasonable overtime.*

132. *However, the agreement provides for a shift roster which requires that employees work an average of 44 hours per week and identifies on the roster the ordinary hours of work as 40 hours (all paid at a particular hourly rate) and the overtime hours as 4 hours (to attract a penalty rate of pay in addition to the ordinary hourly rate).*

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133. As the agreement requires Ennio to work an average of 40 ‘ordinary’ hours per week, these are his ‘ordinary hours of work’. Therefore, the payment to Ennio for 40 hours of work is ‘earnings in respect of ordinary hours of work’ and is OTE. It is therefore included in Ennio’s qualifying earnings.

134. The payment for the additional 4 hours of rostered overtime is not ‘earnings in respect of ordinary hours of work’ and is not OTE. It is not included in Ennio’s qualifying earnings.

Example 3 – no ordinary hours of work stipulated

135. Kim is employed under a contract requiring her to work a minimum number of hours per week in a call centre. By agreement between her and the employer, she may work additional shifts as is mutually convenient. She often does so, though there is no clear and consistent pattern to this.

136. There is no award or agreement governing Kim’s employment that specifies her ordinary hours of work, nor do the extra shifts worked attract any overtime penalties or other higher payments.

137. As there are no stipulated ordinary hours of work, and no readily discernible pattern of customary, regular, normal or usual hours, all of Kim’s hours actually worked are ordinary hours of work. Therefore, all of her wages are OTE and are included in her qualifying earnings.

Example 4 – casual employee who qualifies for shift allowances for some hours and overtime payment for other hours

138. Otzi is employed on a casual basis under a collective agreement. The agreement provides that casuals have no guaranteed minimum working hours in any given week and no entitlement to paid leave. Instead, Otzi receives a ‘casual loading’ equal to 19% of his ordinary time rate of pay for every hour he works.

139. The agreement provides that the ordinary hours of work for all employees, including casuals, are no more than 38 hours in any given week. Work beyond those ordinary hours attracts an overtime penalty rate, in addition to any casual loading otherwise payable.

140. Also, all workers who are required to work late at night or on weekends are entitled to a shift-loading payment of 25% of their ordinary time rate of pay, in addition to any casual loading. However, shift-loadings are not payable for hours that attract the overtime rate.

141. All wage payments, including the casual loading and any shift-loading, for ordinary hours of work as defined in the agreement, are OTE and are included in Otzi’s qualifying earnings.

142. However, if Otzi works any overtime hours, none of the pay he receives for those hours is OTE because such pay is entirely in respect of hours that are not ordinary hours of work. Payment for these hours are not included in Otzi’s qualifying earnings.

Example 5 – casual employee whose hours are paid at overtime rates due to a ‘bandwidth’ clause

143. Take the facts of Example 4 of this Ruling with the following changes. The agreement makes no provision for shift-loadings. Instead, and in addition to the overtime

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entitlement mentioned in Example 4 of this Ruling, any worker, including a casual, who works hours outside a specified bandwidth of hours, being from 8:00 am to 6:00 pm Monday to Friday (public holidays excluded) is entitled to be paid at overtime rates. These hours are defined by the agreement not to be ordinary hours of work.

144. Otzi routinely works an evening shift, with most of his working days starting at 4:00 pm and ending at 11:00 pm. Thus, he is paid at the overtime rate for the hours worked after 6:00 pm.

145. All wage payments, including the casual loading, for the ordinary hours of work as defined in the agreement, are OTE. However, the hours that Otzi works that are overtime hours – including those that are overtime hours because they are worked outside the 8:00 am to 6:00 pm bandwidth mentioned in paragraph 143 of this Ruling – are not ordinary hours. All pay for these hours is not OTE and not included in Otzi's qualifying earnings.

Example 6 – piece-rates where no ordinary hours of work are stipulated

146. Evan works as a fruit picker for Green Apples Co. Evan is paid \$0.10 for every kilogram of apples that he picks. There are no ordinary hours specified in any award or agreement. Evan produces 5,000 kilograms of apples in his working hours in the week and so is paid \$500 by Green Apples Co.

147. As Evan's ordinary hours of work are not specified in any award or agreement, his ordinary hours of work are the hours that he actually works. Therefore, the \$500 payment Evan receives is an entitlement accrued as a result of providing services during his ordinary hours of work. The payment received by Evan is therefore 'earnings in respect of ordinary hours of work' and is OTE. It is included in Evan's qualifying earnings.

Example 7 – overtime component of earnings based on 'hourly driving rate' formula stipulated in award

148. Samson is employed as a long-distance truck driver. He is employed under an award which stipulates a minimum guaranteed wage payment per week, regardless of how little he actually drives. If, however, a driver travels sufficiently far in a given week, an hourly rate of pay determines the driving component of his wages in place of the minimum weekly wage.

149. One week, Samson travels from Adelaide to Darwin via the Stuart Highway. This is stipulated in his award as a distance of 3,019 kilometres, and he is assumed to have taken 40.25 hours to complete this journey. Samson's driving component of his earnings for this trip is worked out by multiplying the hourly driving rate by 40.25 hours. This produces a result well in excess of the minimum guaranteed payment for the week in question. Samson is therefore paid that higher amount.

150. The hourly driving rate is said by the award to incorporate 2 additional components: an 'Industry Disability Allowance' and an 'Overtime Allowance'. The formula in the award stipulates that the hourly rate is determined by dividing the minimum weekly wage rate stipulated in the award by 40 and multiplying it by 1.3 (Industry Disability Allowance) and 1.2 (Overtime Allowance).

151. The 'Industry Disability Allowance' is expressed as taking the place of shift-loading and various conditions-of-service allowances. The 'Overtime Allowance', by contrast, takes the place of any entitlement to be paid for overtime hours.

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152. *The overtime allowance component of the payment Samson receives (being the basic hourly rate multiplied by 0.2) is not OTE as, having regard to the terms of the award as a whole, it is genuinely referable, albeit on a notional averaged basis, to overtime hours worked rather than ordinary hours. It is not included in Samson’s qualifying earnings.*

153. *The remainder of the hourly rate is OTE. In particular, the Industry Disability Allowance is referable, albeit on a notional averaged basis, to earnings that would be in respect of ordinary hours. It is included in Samson’s qualifying earnings.*

Allowances

Example 8 – allowance by way of unconditional extra payment

154. *Yuihim is a marketing executive of Liaisons Co. In addition to his usual salary, he is paid \$500 per month as an allowance for the purposes of entertaining clients. The amount is paid to Yuihim regardless of whether or not he spends the \$500. He has complete discretion as to whether or not he spends the allowance.*

155. *The payments made to Yuihim are a reward for services he provides as an employee. He is entitled to keep them regardless of whether he incurs any expense in respect of the stated purpose of the payments.*

156. *The allowance is not paid for services provided by Yuihim only outside his ordinary hours of work. Therefore, the monthly payments are earnings ‘in respect of ordinary hours of work’ and are OTE and included in Yuihim’s qualifying earnings.*

Example 9 – expense allowance expected to be fully expended

157. *Matteo is an employee of JJ Investment Co. In addition to his usual salary, Matteo is paid \$300 per month to cover expenses he is expected to incur while visiting clients. The expenses Matteo incurs are for travel to client sites, maintenance of a mobile phone and internet access to remotely connect to the office. The allowance is a predetermined amount which has been calculated to cover the estimated expense and is given with the expectation that it will be fully expended in the course of the employee providing the services to the employer.*

158. *As the allowance is not a reward for the services which he is providing as an employee of the company, the payment is not considered to be OTE. It is not included in Matteo’s qualifying earnings.*

Example 10 – danger allowance

159. *Bernie works for an oil company and is working on an offshore oil rig. Bernie is paid an annual allowance of \$2,000 to compensate him for the hazardous conditions of working on an oil rig and the varying times in the day during which Bernie’s shifts can be scheduled. Bernie regularly works 5 shifts of 10 hours per week under the terms of his industry agreement. The allowance is not expended in the course of Bernie’s work.*

160. *Conditions of work allowances such as Bernie’s danger allowance are not paid for any specific services provided by the employee, and are not expended in the course of the employee’s work. These allowances are additional remuneration paid to the employee for work undertaken and are not specifically referable only to hours outside of the ordinary hours. Therefore, the allowance is an earning ‘in respect of ordinary hours of work’ and is OTE. It is included in Bernie’s qualifying earnings.*

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Example 11 – retention allowance

161. *Therese works as an engineer for an aircraft maintenance company. Due to her specific expertise, Therese is paid a regular allowance of \$140 per fortnight, in addition to her salary, to encourage her to remain with the company in her current position.*

162. *The retention allowance received by Therese is paid as a reward for, and as part of, her continuing services to her company. It is not referable to overtime or non-ordinary hours in particular. Therefore, the allowance is ‘earnings in respect of ordinary hours of work’ and is OTE. It is included in Therese’s qualifying earnings.*

Example 12 – hourly on-call allowance in relation to ordinary hours of work for doctors

163. *Leyna is a medical doctor employed at the State Hospital. Leyna’s employment contract stipulates that she is paid at a specified hourly rate and, in addition, receives an hourly on-call allowance while carrying out her duties at the hospital during her ordinary hours of work. The allowance is for making herself available to perform urgent surgery cases which may arise during her shift. Where the duration of such surgery cases extend Leyna’s total number of hours worked for that particular shift beyond her stipulated ordinary hours of work per shift, she is separately remunerated in relation to those extra hours on duty, but there is no hourly on-call allowance payable on those extra hours.*

164. *Leyna’s hourly on-call allowance is considered ‘earnings in respect of ordinary hours of work’ as it is paid with reference to her ordinary hours of work and is OTE. The allowance is included in Leyna’s qualifying earnings.*

Payment of expenses***Example 13 – reimbursement of expense***

165. *Fernando travels by train on behalf of his employer and pays for the train ticket for the trip. On his return, he provides receipts to his employer totalling \$14.50 for the cost of the train ticket. The employer pays Fernando exactly \$14.50 in respect of the receipts.*

166. *The payment that Fernando receives from his employer is not a reward for his services. Rather, the payment is an exact reimbursement of an expense which he has incurred in the course of his duties. The payment received is not earnings for the purposes of the definition of OTE. The payment is not included in Fernando’s qualifying earnings.*

Example 14 – reimbursement of travel costs

167. *Genevieve uses her own car to travel 100 kilometres on behalf of her employer, FTR Co. Genevieve pays for all expenses, such as petrol, and incurs wear and tear on her vehicle. On her return, Genevieve submits a claim for \$58 for her travel costs and receives a payment from FTR Co. Genevieve has calculated the amount by applying a set rate per kilometre travelled based on the statutory formula in the income tax laws.*

168. *The payment made to Genevieve by FTR Co is not paid as reward for performing services as an employee. Rather, the payment is a reimbursement for the expense calculated on a reasonable basis according to income tax laws. The payment is not OTE. The payment is not included in Genevieve’s qualifying earnings.*

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Example 15 – payments for unfair dismissal resulting from an order via the Industrial Relations Commission

169. *Priya receives a payment from her employer, ordered by the Industrial Relations Commission, in relation to unfair dismissal. The payment ordered is equal to 10 weeks' pay. Priya's employment has been terminated.*

170. *The payment made to Priya for unfair dismissal is not remuneration or reward for services rendered to her former employer, but rather a remedy for unlawful termination of employment. In this instance, it does not matter that the payment is based on 10 weeks' pay. The payment is in the nature of damages or compensation granted due to the finding of an unfair dismissal and therefore not OTE. The payment is not included in Priya's qualifying earnings.*

Example 16 – workers' compensation

171. *Dean and Lamont are both injured in a snorkelling accident while on duty as reef guides for their employer, Ocean Tours.*

172. *Dean is able to resume his ordinary hours of work within a month, although he is placed on lighter duties. Lamont is not able to return to work as a result of the accident.*

173. *Both employees receive workers' compensation payments from the Atlantis Insurance Co in an amount equal to a continuation of their salaries.*

174. *The workers' compensation payment received by Dean when he returns to work is OTE, as it is paid to ensure that he continues to receive full payment for his ordinary hours of work. The payment is included in Dean's qualifying earnings.*

175. *As Lamont is receiving workers' compensation payments when he is not working nor required to work, it is not OTE. The payment is not included in Lamont's qualifying earnings.*

Leave payments

Example 17 – annual leave

176. *Marissa takes 4 weeks annual leave to which is she entitled as part of her employment package. During her leave, Marissa's employer continues to pay Marissa her regular weekly pay.*

177. *Although the payments are made to Marissa while she is on annual leave (and thus are not paid for actual attendance at work), they are regarded as a continuation of her ordinary pay with reference to her ordinary hours of work. The earnings are not calculated by reference to other hours of work.*

178. *Therefore, the payments are 'earnings in respect of ordinary hours of work' and are OTE. The payments are included in Marissa's qualifying earnings.*

Example 18 – rostered days off

179. *Benito is a carpenter and works full-time for an employer. The award under which he is employed stipulates the following:*

- *A full-time employee will work 38 ordinary hours per week at ordinary rates of pay, averaged over a 20-day, 4-week cycle. This works out to be an average of 7.6 hours a day.*

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- *There will be a rostering system which allows for one RDO at ordinary rates of pay every 4-week cycle.*
- *An employee can elect to cash-out an accrued RDO instead of taking the scheduled paid day off, which will be paid out at ordinary rates of pay.*

180. *In accordance with the terms of the award, Benito has the following arrangement with his employer:*

- *Benito will work 8 hours each day, totalling 40 hours per week.*
- *For each day worked, Benito is paid for 7.6 hours.*
- *The additional 0.4 hours Benito works per day, which totals 2 hours per week, will accrue to a full (7.6 hours) paid day off at ordinary rates of pay following 19 days of work.*

181. *As the RDO is generated from ordinary hours worked across the 4-week cycle, the remuneration when Benito takes the RDO is OTE, and therefore qualifying earnings.*

182. *Similarly, if Benito elects to cash-out an accrued RDO, since the accrued RDO hours are regarded as ordinary hours under the relevant award, the payment of the cashed-out RDO to Benito where his employment relationship continues is OTE and, as such, qualifying earnings.*

Example 19 – time off in lieu

183. *Lan is expected to work 38 ordinary hours per week at ordinary rates of pay. This works out to be an average of 7.6 hours a day. Lan is paid on a fortnightly basis.*

184. *In a given fortnight, Lan works an additional 2 hours above the standard 7.6 hours on Tuesday and Thursday of both weeks. This means she works 4 hours per week above her standard weekly ordinary hours, totalling 8 hours during the fortnight.*

185. *The award under which Lan is employed allows Lan and her employer to have a TOIL agreement, enabling Lan to take paid time off at ordinary rates of pay instead of being paid overtime for any accrued additional hours worked above her standard weekly ordinary hours.*

186. *Lan and her employer agree that Lan will take one of her usual work days off as TOIL in the next fortnight instead of being paid overtime.*

187. *Lan receives her usual fortnightly pay, which includes the amount Lan is paid at ordinary rates for the day she takes off as TOIL. The full pay amount is OTE and is included in Lan's qualifying earnings.*

Termination payments

Example 20 – termination payments in lieu of notice and unused annual leave

188. *Darren is an employee of Tafs Co. As a result of poor behaviour, Darren is dismissed. Rather than requiring Darren to continue working throughout the obligatory notice period of 2 weeks, Tafs Co terminates Darren's employment immediately and pays him (in lieu of notice) the equivalent of 2 weeks' salary.*

189. *Tafs Co also makes an unused annual leave payment to Darren in respect of one week's unused leave.*

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190. Although Darren did not perform duties to receive payment in lieu of notice, the payment was nonetheless made ‘in respect of ordinary hours of work’ rather than overtime hours. To this extent, the amount is OTE and to be included in Darren’s qualifying earnings.

191. The unused annual leave payment made to Darren is not OTE, being specifically excluded from the definition of ‘ordinary time earnings’. It is not a payment of qualifying earnings.

Example 21 – termination payments including unused time off in lieu

192. Following on from Example 19 of this Ruling, Lan decides to resign from her job. At the time, she has 6 hours of accrued TOIL. The award under which she is employed stipulates that her employer must pay out any accrued but unused TOIL hours at overtime rates on termination of employment.

193. As Lan is not utilising the leave during her ordinary hours of work, and the TOIL is paid out at overtime rates (reflecting that the TOIL was wholly referable to work outside her ordinary hours of work that cannot now be utilised within her ordinary hours due to the employment ceasing), the payment of the unused TOIL as part of Lan’s termination payment would not be OTE and would not be included in her qualifying earnings.

Bonuses

Example 22 – performance bonus

194. Tamara is an adviser at a finance company. At the end of the year, Tamara receives a bonus of \$5,000, which the employer says is for her exceptional work and results during the year and also for the long hours which she has had to work.

195. The bonus received by Tamara is a reward for the services she has provided to her employer. Therefore, the bonus is ‘earnings’ for the purposes of the definition of OTE.

196. The earnings are ‘in respect of ordinary hours of work’. Although the bonus is said to recognise both her ordinary service and the long hours she has had to work, it is sufficiently connected with ordinary hours to be OTE and therefore included in Tamara’s qualifying earnings. We do not accept that such bonus payments can be dissected into an OTE component and ‘overtime’ payments. This is in contrast to an overtime only bonus as considered in Example 25 of this Ruling.

Example 23 – bonus described as ex-gratia but paid in respect of ordinary hours of work

197. Nammie is an employee of Tangerine Co. As an employee, Nammie is entitled to receive a bonus payment which is labelled an ‘ex gratia payment’ by the employer. This bonus is paid out of a pool of funds from revenue generated by the work completed by the employees. In order to qualify for payment of the bonus, Nammie is required to achieve a minimum monthly revenue target. However, the employer is also able to exercise discretion to withhold the bonus on disciplinary grounds or pay a bonus to employees who do not meet the minimum monthly target. Payments are made in recognition of the hard work of the staff.

198. The payment made to Nammie is a reward for her services as an employee.

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199. *Although the bonus payment is labelled an ex gratia payment and is indeed gratuitous in as much as the employer does not necessarily have to pay it, this does not stop it from being a payment that is OTE. There is a causal connection between the payment and the work completed by employees. The payment is not a personal gift unrelated to any work performed.*

200. *The bonus is not solely referable to hours of work outside ordinary hours. Therefore, the bonus payment is ‘in respect of ordinary hours of work’ and is therefore OTE. Accordingly, the bonus payment is included in Nammie’s qualifying earnings.*

Example 24 – Christmas bonus

201. *Suzie is an employee of Jessri Co. At the end of the year the company gives her what is described as a Christmas gift of \$250 cash. It is said to be a Christmas bonus paid to Suzie as an expression of the company’s goodwill. It is also said to be not related to Suzie’s performance at work.*

202. *On these facts, we would treat the payment made to Suzie as qualifying earnings. In the absence of clear evidence to the contrary, the payment would be seen as, in substance, given as a reward for services provided in respect of her work, despite the label which has been given to the payment. Only in rare cases, such as where the payment is very small, or there is a family or other clear private connection between employer and employee, would we entertain any suggestion that payments like this are not qualifying earnings.*

203. *The bonus is not solely referable to hours of work outside ordinary hours. Therefore, the bonus payment is ‘in respect of ordinary hours of work’ and is OTE. The bonus payment is included in Suzie’s qualifying earnings.*

Example 25 – bonus in respect of overtime only

204. *Robert is an employee of SRP Co. In addition to his normal duties, Robert is asked to work overtime hours on 5 consecutive weekends for the specific purpose of writing a staff training manual about a piece of newly enacted legislation.*

205. *Robert’s manual is distributed by SRP Co to other companies within the industry, all of which pay fees to SRP Co for its use. SRP Co passes on a portion of these receipts to Robert in the form of a bonus.*

206. *On these unusual facts, the services which Robert provides are all identifiably performed outside of Robert’s ordinary hours of work. The bonus payment is not OTE and is not included in Robert’s qualifying earnings.*

Example relating to payments for a person’s labour

Example 26 – payment for labour under a subsection 12(3) contract

207. *Ren is an IT consultant who has signed a 12-month contract with Company A to perform work upgrading their IT systems over that period.*

208. *The contract specifies that Ren is required to work an average of 30 hours per week. It also specifies Ren is to personally undertake the work required under the contract.*

209. *Ren has an ABN and invoices Company A weekly for the hours she works.*

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210. *As Ren is working under a contract that is wholly or principally for her labour, she is an employee of Company A under subsection 12(3) and the weekly invoiced amounts for her labour are included in Ren’s qualifying earnings.*

Example relating to sacrificed contributions

Example 27 – qualifying earnings includes reduction for sacrificed contributions

211. *Andrew is paid \$80,000 in earnings, plus \$9,600 in employer superannuation contributions, in the 2026–27 income year.*

212. *In the same income year, Andrew enters into a salary sacrifice arrangement to reduce his earnings to \$75,000, and a \$5,000 sacrificed contribution is made by his employer to his complying superannuation fund.*

213. *The reduction in Andrew’s earnings, being equivalent to the sacrificed contribution amount of \$5,000, is counted in Andrew’s qualifying earnings because it is deducted from his earnings. This amount is specifically included in qualifying earnings under paragraph 10A(1)(h).*

Examples relating to maximum contributions base

214. For the purposes of Examples 28 and 29 of this Ruling, assume that, for the 2026–27 financial year, the basic concessional contributions cap is \$30,000. On this basis, the MCB for that financial year is \$250,000, calculated as follows:

$$\$30,000 \times (100 \div 12) = \$250,000$$

Example 28 – maximum contributions base and lump sum earnings in the 2026–27 financial year

215. *Miguel’s base pay includes \$150,000 of qualifying earnings for the 2026–27 financial year.*

216. *Miguel receives commission payments totalling \$30,000 from his employer during the 2026–27 financial year, which are also qualifying earnings. Therefore, Miguel’s total qualifying earnings for the financial year are \$180,000.*

217. *The MCB for the 2026–27 financial year is \$250,000. Because Miguel’s total qualifying earnings for the financial year are less than the MCB, his employer must pay SG contributions on all \$180,000 of his qualifying earnings to avoid an SG shortfall.*

Example 29 – calculating the maximum contributions base and excess for the 2026–27 financial year

218. *Marcie is employed by Axie Co. Marcie’s base pay includes \$210,000 of qualifying earnings for the 2026–27 financial year.*

219. *Marcie receives a lump sum performance bonus payment of \$50,000 from Axie Co on 30 June 2027 (the QE day), which is OTE and therefore qualifying earnings. This payment, when combined with the base pay Marcie has received throughout the 2026–27 financial year, brings Marcie’s total qualifying earnings for the financial year as at that QE day, to \$260,000.*

220. *For the \$50,000 payment made on the 30 June 2027 QE day, \$40,000 will be included as a payment of qualifying earnings to Marcie for that QE day. The remaining*

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\$10,000 is disregarded (being the amount of qualifying earnings exceeding the 2026–27 financial year’s MCB of \$250,000) and will not be included in the calculation of the individual SG amount for the QE day. Axie Co will not need to make SG contributions on this excess amount of \$10,000 as Marcie’s total qualifying earnings has reached the MCB for the 2026–27 financial year.

Example 30 – exemption certificate – employee changes jobs

221. *Chris changes jobs during the financial year, so has 2 consecutive employers for that year, Eddy Co and Breaker Co.*

222. *He works for Eddy Co from 1 July 2028 to 31 December 2028 and is paid a total of \$250,000 in qualifying earnings during this time.*

223. *He signs an employment contract with Breaker Co on 28 November 2028, with a deferred commencement date of 1 January 2029.*

224. *Chris and Breaker Co commence his onboarding process from 1 December 2028, in readiness for his first day in the office with Breaker Co on 1 January 2029. During this period, Chris is added to Breaker Co’s payroll and completes relevant onboarding activities.*

225. *Chris’ employment contract with Breaker Co stipulates a total of \$200,000 in qualifying earnings for the period 1 January 2029 to 30 June 2029.*

226. *Chris realises that the amount of SG contributions made (or expected to be made) by his employers may result in him having excess concessional contributions for the 2028–29 financial year (resulting in the payment of additional tax by Chris). On 30 November 2028, Chris applies for an employer shortfall exemption certificate for Breaker Co for the period from 1 January 2029 to 30 June 2029.*

227. *After reviewing Chris’ circumstances, the Commissioner is satisfied that, unless a certificate is issued, Chris will likely have excess concessional contributions for the financial year. The Commissioner is also satisfied that Eddy Co had an individual SG amount for Chris for a QE day during the financial year and that the issue of an exemption certificate is appropriate. The Commissioner issues Chris with an employer shortfall exemption certificate for the period 1 January 2029 to 30 June 2029 and provide written notice to Breaker Co of the decision, with a copy of the certificate.*

228. *Breaker Co is not required to make any SG contributions for Chris to avoid liability to the SG charge for QE days occurring during the period starting 1 January 2029 to 30 June 2029.*

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Appendix 2 – Your comments

229. You are invited to comment on this draft Ruling. Forward your comments to the contact officer by the due date.

230. A compendium of comments is prepared as part of the finalisation of this Ruling. An edited version of the compendium (names and identifying information removed) is published to the ATO Legal database on ato.gov.au.

231. Advise the contact officer if you do not wish for your comments to be included in the edited compendium.

Due date: 1 May 2026

Contact officer details have been removed as the comments period has ended.

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References

Previous draft:

Not previously issued as a draft

Related rulings and determinations:

LCR 2026/D2; LCR 2026/D3; LCR 2026/D4;
IT 2307; TR 2002/21; TR 2023/4; TR 1999/17; SGD
96/2; SGR 2009/1; SGR 2005/2

Legislative references

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