



SGD 93/10 - Superannuation Guarantee: is a director who is entitled to directors' fees, but who must account to another for them, an employee of the company?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *8 July 1993*

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

Superannuation Guarantee Determination

Superannuation Guarantee: is a director who is entitled to directors' fees, but who must account to another for them, an employee of the company?

1. Yes, people entitled to payment for the performance of duties as a director are employees of the company under subsection 12(2) of the *Superannuation Guarantee (Administration) Act 1992* even if:

- they must account to their partners, a company, or any other entity for those fees; or
- the company pays the fees directly to their partners, a company, or any other entity.

2. A director *is entitled* to the payment of fees by the company if the payment is made under a contract between the director and the company. That the director directs the payment elsewhere, or is obliged to account to other parties for the fees earned, does not mean that the director becomes disentitled to the directors' fees.

3. A director *is not entitled* to the payment of fees if the only contract is between the company and a party appointing the director under which the appointor agrees to provide directorial services in return for a payment to itself.

Commissioner of Taxation

8/7/93

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Related Determinations:

Related Rulings:

Subject Ref: directors; partners; nominee

Legislative Ref: SGAA 12(2)

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ATO Ref: NO 92/7718-8

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