



SGD 93/14 - When are entertainers employees for Superannuation Guarantee purposes?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *9 December 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

When are entertainers employees for Superannuation Guarantee purposes?

1. A number of situations arise. In each situation it is essential to determine the real terms of the agreement between the parties.
2. An entertainer could be a common law employee if an employer/employee relationship as set out in Superannuation Guarantee Ruling 93/1, Who is an employee, exists. This determination does not attempt to explain the common law issues.

Definition

3. Paragraph 12(8)(a) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) states that; 'a person who is paid to perform or present, or to participate in the performance or presentation of any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills is an employee of the person liable to make the payment;'. Persons paid to provide services in connection with any of the paragraph 12(8)(a) activities are employees under paragraph 12(8)(b) of the SGAA.
4. The employer is the person who is *liable* to make the payment.

Hotel/club/other user - (the 'user')

5. If a user engages an entertainer to perform at a concert or other event, the user is the employer of the entertainer if the user is liable to make the payment.

Door deals

6. If the user pays the door takings to the entertainer (whether in addition to a set fee or not), the user making the payment is the employer of the entertainer.
7. If the user pays a promoter a set fee and pays the entertainer the door takings, the user is the employer of the entertainer. The user may also be the employer of the promoter under paragraph 12(8)(b) of the SGAA.
8. If the user allows the entertainer to charge an entry fee under a 'door deal' arrangement (instead of paying the door takings to the entertainer), the user is not the employer of the entertainer under the SGAA because it is not liable to make any payment to the entertainer.

Managers/agents

9. If the manager of an entertainer arranges work for that entertainer, and is liable to make a payment to the entertainer, the manager may be the employer of the entertainer. All such arrangements need to be examined for any agency implications. (See Superannuation Guarantee Ruling 93/2 Independent Agencies.)

10. If the entertainer has a contract with an agency under which the agency is to find the entertainer work in return for a commission, the agency will not be the employer in most circumstances.

11. If a manager acts as the agent of the entertainer and the user pays the manager a set fee and the manager, in turn, pays the entertainer, the user is generally the employer of the entertainer because it is the body liable to make the payment.

Persons engaged by an entertainer

12. If the entertainer or group of entertainers uses other individuals (eg; roadies; crew) to help with a performance, the legislation specifically includes those persons as employees. They are employees of the person liable to make the payment for any services provided to the entertainer. (See paragraph 12(8)(b) of the SGAA). This could be either the entertainer or the user.

Companies

13. If a contract is between the user and the entertainer's company, the user is not the employer because subsection 12(8) of the SGAA only applies to employees who are 'persons'. In such a case, any Superannuation Guarantee obligation rests with the entertainer's company. A similar outcome would result for the purposes of the SGAA if a road crew operated through a company.

Partnerships

14. If a contract is with a group of performers (for example, a band operating under a partnership arrangement) there is no Superannuation Guarantee obligation as there is no contract with a 'person' and there is no 'person' paid to perform within the meaning of paragraph 12(8)(a) of the SGAA.

Non-residents

15. If a non-resident entertainer is paid by either a resident or a non-resident employer to perform in Australia, the SGAA applies.

Commissioner of Taxation

9/12/93

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Related Determinations:

Related Rulings: IT 2541; SGR 93/1; SGR 93/2

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