



SGR 93/3 - Superannuation guarantee: ordinary time earnings

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Superannuation Guarantee Ruling

Superannuation guarantee: ordinary time earnings

Superannuation Guarantee Rulings 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 Rulings and Determinations.

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What this Ruling is about

1. This Ruling explains what are 'ordinary time earnings' (OTE) as defined in subsection 6(1) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA).
2. Under the SGAA, an employer's liability is based on the employee's notional earnings base. OTE is used as a default earnings base where there are no other acceptable earnings bases relevant to a particular employee.

Ruling

3. Section 6(1) of the SGAA defines OTE in this way:

'**ordinary time earnings**', in relation to an employee, means:

- (a) the total of:
 - (i) earnings in respect of ordinary hours of work; and
 - (ii) earnings consisting of over-award payments, shift-loading or commission; or
- (b) if the total ascertained in accordance with paragraph (a) would be greater than the maximum contribution base for the contribution period -- the maximum contribution base'.

4. A "**maximum contribution base**" is a maximum limit on the amount of superannuation support that an employer is expected to provide for the benefit of an employee. The maximum limit for each contribution period in the 1992-93

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financial year is \$40,000 and \$20,000 for later years. This maximum limit is subject to annual indexation.

Ordinary Hours of Work

5. The ordinary hours of work may be specified in a statute or under an industrial award. If so, the ordinary hours specified are also the ordinary hours of work under the SGAA.

6. If an employee is not covered by an award, but has agreed to work a certain number of hours, those hours are the employee's ordinary hours of work. The hours agreed will be determined in the light of all the circumstances (for example, hours actually worked; the industry norm; and what is contained in any written agreement).

7. If the ordinary hours of work are not specified or agreed, the ordinary hours of work will be the hours actually worked and any hours of paid leave.

8. Ordinary hours of work are not limited to hours between 9am - 5pm, Monday - Friday. They could include night and weekend shifts.

In respect of

9. The term '*in respect of*' means to have some connection with. For the definition of OTE, a payment will be taken to be earnings *in respect of* ordinary hours of work if it is made:

- for attendance, or for work done, in those hours; or
- to satisfy an entitlement that accrued as a result of attending, or working, in those hours.

Entitlements accrued before 1 July 1992

10. A payment made after 30 June 1992 will form part of OTE even though it reflects an entitlement accrued for ordinary hours of work before the SGAA commenced.

Over-award payments, shift-loading and commissions

11. Over-award payments, shift-loading and commissions are OTE even if they are paid for work done outside ordinary hours of work.

12. An over-award payment is the excess by which the actual rate paid to an employee exceeds the award rate.

13. Shift-loading is an additional payment for employees who work shifts other than normal day shifts. The payment may be a percentage of the ordinary time rate and is paid as compensation for inconvenient working hours.

14. A commission is any payment made to an employee on the basis of agreed performance criteria (for example, a payment based on a percentage of sales). A commission also includes a fee allocated to an agent for services rendered.

Date of effect

15. This Ruling sets out the current practice of the Australian Taxation Office and is not concerned with a change in interpretation. Consequently, it applies from the time that the legislation commenced to operate.

Explanations**What is included in Ordinary Time Earnings?**

16.

Types of Earnings	Reasons
<i>Directors' fees</i>	Any fees paid for directors are payments for directors' ordinary hours of work.

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<i>Remuneration while on annual leave , sick leave or long service leave</i>	Paid for an entitlement accrued on the basis of ordinary hours of work. Therefore, it is paid in respect of ordinary hours of work. It also includes amounts accrued before 1 July 1992 but paid after 30 June 1992.
<i>Lump sums paid for accrued annual leave, accrued long service leave or accrued sick leave on termination of employment</i>	Paid for an entitlement accrued on the basis of ordinary hours of work. Therefore, paid in respect of ordinary hours of work. These include amounts accrued before 1 July 1992 but paid after 30 June 1992.
<i>Allowances (not reimbursement of expenses)</i>	See paragraph 18.
<i>Bonuses calculated by reference to work undertaken/sales made during ordinary hours of work</i>	See paragraphs 21-23.

<i>Casual loading</i>	These are payments for ordinary hours of work to reflect the lack of formal benefits associated with employment such as sick leave, annual leave etc.
<i>Benefits under Employee Share Acquisition Schemes paid as a bonus but not subject to Fringe Benefits Tax</i>	This is a form of bonus. See paragraphs 21-23.
<i>Government (Wage) Subsidies</i>	Governments sometimes provide subsidies to employers who employ particular types of people. Such a subsidy (for example, the Job-Start Allowance) reimburses the employer. The employer should not deduct the subsidy to determine ordinary time earnings. The amount the employee receives in respect of ordinary hours of work is not affected by an amount the employer receives as a subsidy.

What is excluded from Ordinary Time Earnings?

17.

Types of Earnings	Reasons
<i>Overtime payments</i>	These are paid for work performed outside ordinary hours of work. It makes no difference how often the employee works overtime.
<i>'Christmas' bonuses</i>	See paragraph 23.

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<i>Payments in lieu of notice</i>	These are paid for hours never worked. There is no entitlement that accrues in ordinary hours even if the calculation uses a formula based on length of service.
<i>Redundancy payments</i>	Paid for non-transferable credits and inconvenience and hardship. No entitlement accrues during ordinary hours.

<i>Other payments not covered by paragraph 16 made by employer on termination of employment</i>	These are connected, not with ordinary hours of work, but with the end of ordinary hours of work. They should not be confused with payments for ordinary hours of work accumulated until the termination of employment.
<i>Payments when on maternity or paternity leave</i>	These are payments made in respect of employment and parenthood, not in respect of ordinary hours of work.
<i>Workers' compensation payments</i>	These are payments made in respect of employment, not ordinary hours of work.
<i>Top-up payments or accident make-up payments</i>	These are payments made in respect of employment, not ordinary hours of work.
<i>Benefits subject to tax under the Fringe Benefits Tax Assessment Act 1986</i>	All payments that form part of OTE are also part of 'salary or wages'. As these amounts are excluded from 'salary or wages', therefore they cannot form part of OTE.
<i>Payments by way of restraint of trade</i>	These are paid for not exercising rights or freedoms. They are not paid in respect of ordinary hours of work.
<i>Reimbursement of expenses</i>	These are paid to compensate for expenses incurred by an employee rather than for ordinary hours of work. See paragraphs 19-20.
<i>Annual Leave Loading</i>	This is paid in respect of employment, not ordinary hours of work.

Allowances and reimbursements

18. What is an allowance? An allowance is a payment of a definite predetermined amount to cover an estimated expense. It is paid regardless of whether the employee incurs the expected expense. The employee has the discretion whether or not to expend the allowance.

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19. **What is a reimbursement?** 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 expenses lends weight to a presumption that a payment is a reimbursement rather than an allowance.

20. 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. The payment is not included in OTE.

Bonuses

21. **A bonus** will form part of an employee's ordinary time earnings where the bonus is paid in respect of ordinary hours of work. The *CCH Macquarie Dictionary of Employment and Industrial Relations* defines a bonus as:

"a payment above the regular basic rate or standard pay, e.g., a payment for overtime or shift-work, or attendance, an allowance for work under exceptional conditions, as well as an incentive payment made under a piecework system or incentive scheme or as a production bonus."

22. All of these payments (excluding payments for overtime) would form part of an employee's ordinary time earnings.

23. For the definition of OTE, a bonus that is an "ex gratia payment" would not form part of an employee's ordinary time earnings. A discretionary payment made as a free gift and not subject to negotiation (such as a Christmas bonus) is not OTE.

Examples

24.

- (a) *David is an employee of JJ Investment Pty. Ltd. Apart from his usual salary, David is paid \$300 per month to cover expenses he is*

expected to incur while visiting clients. The payment is an allowance because David is paid regardless of whether he spends the \$300. Therefore, the payment is OTE.

- (b) Bernie works for an oil company and is living on an offshore oil rig. Bernie is paid a living-away-from-home allowance to compensate him for having to live away from his usual place of residence. This payment is a fringe benefit and not treated as salary or wages in the employee's hands. Therefore, it is not OTE.

- (c) Lesley is an employee of East Pty. Ltd. At the end of the year the company gives her \$2,500 as a Christmas gift. This is a Christmas bonus paid to Lesley as an expression of the company's goodwill. It is not a payment made in respect of Lesley's ordinary hours of work, and so it is not OTE.

If the bonus had been paid to Lesley on the basis of agreed performance criteria it would be OTE.

- (d) Mary's employer requests her to purchase some office supplies and gives her \$100. Mary is required to obtain a receipt and to return the change to her employer. This payment is neither a reimbursement nor an allowance and is not included in OTE. Mary expends the money as agent of her employer.
- (e) Jon is rostered to work shift work which includes weekend work. In addition to his normal pay and shift loading, he is paid a weekend penalty rate. At the end of one shift, Jon's employer asks him to work two hours overtime. The weekend penalty rate forms part of OTE as it is paid for ordinary hours of work. The shift loading is included in OTE, by definition. However, the overtime is not included in OTE as it is paid for work performed outside ordinary hours of work.
- (f) Don travels by car on behalf of his employer and pays for the petrol used on the trip. On his return he provides receipts to his employer for \$150; the cost of the petrol. When the employer reimburses Don the \$150 the payment is a reimbursement and does not form part of OTE.

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- reimbursement
- shift-loading

legislative references

- SGAA 6(1)

ATTACHMENT A

CHECKLIST - OTE & SALARY/WAGES

Payment Type	OTE?	Salary or Wages?
Allowances paid (other than a reimbursement of expenses)	Yes	Yes
Reimbursement of expenses (e.g. travel costs)	No	No
Bonuses that do not relate to specific performance criteria - (e.g. Christmas bonuses)	No	Yes
Other bonuses	Yes	Yes
Commission	Yes	Yes
Over award payments	Yes	Yes
Shift loading	Yes	Yes
Overtime	No	Yes
Casual loading	Yes	Yes
Benefits subject to fringe benefits tax	No	No
Benefits under Employee Share Acquisition Schemes paid as a bonus and not subject to Fringe Benefits Tax	Yes	Yes
Workers compensation payments, including top-up payments	No	No
Government wage subsidies (e.g. Jobstart)	Yes	Yes
Payments when on maternity or paternity leave	No	Yes
Pay for annual holiday leave taken	Yes	Yes
Annual leave loading	No	Yes
Pay for sick leave taken	Yes	Yes
Pay for long service leave taken	Yes	Yes

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Payment Type	OTE?	Salary or Wages?
Accrued annual leave, long service leave and sick leave paid as a lump sum on termination	Yes	Yes
Payments in lieu of notice	No	Yes
Redundancy payments	No	Yes
Other payments made by an employer on termination of employment	No	Yes
Director's fees	Yes	Yes
Payments for performance in, or provision of services relating to, entertainment, sport, promotions, films, discs, tapes, TV, or radio	Yes	Yes
Payments to a contractor who is an employee under the SGAA (labour portion only)	Yes	Yes
Dividends	No	No
Partnership and trust distributions	No	No
Payments for entering into a restraint of trade agreement	No	No
Payments for domestic or private work under 30 hours per week	No	No