


***SGD 2006/2A1 - Addendum - Superannuation guarantee: can an entity that is an employer of an individual for superannuation guarantee purposes only because of subsection 12(3) or 12(8) of the Superannuation Guarantee (Administration) Act 1992 enter into an effective 'salary' sacrifice arrangement with the individual such that the contributions to a complying superannuation fund or retirement savings account made under the arrangement in lieu of 'salary' for the individual are employer contributions?***

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## Addendum

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### Superannuation Guarantee Determination

Superannuation guarantee: can an entity that is an employer of an individual for superannuation guarantee purposes only because of subsection 12(3) or 12(8) of the *Superannuation Guarantee (Administration) Act 1992* enter into an effective ‘salary’ sacrifice arrangement with the individual such that the contributions to a complying superannuation fund or retirement savings account made under the arrangement in lieu of ‘salary’ for the individual are employer contributions?

This Addendum amends Superannuation Guarantee Determination SGD 2006/2 to update references to income tax legislation and to reflect amendments made to superannuation guarantee legislation by the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act 2019*.

SGD 2006/2 is amended as follows:

**1. Paragraph 2**

(a) Omit the paragraph, substitute:

If the ‘salary’ sacrifice arrangement is effective, the contributions are properly considered to be made by the employer for the purposes of Subdivision 290-B of the *Income Tax Assessment Act 1997* (which deals with deductions for employer contributions) and would also ensure that the contributions are not considered to be income in the hands of the employee.

(b) After the paragraph, insert new paragraph 2A:

2A. However, in working out any superannuation guarantee shortfall for quarters beginning on or after 1 January 2020<sup>A1</sup>:

- such employer contributions do not reduce an employer’s charge percentage under section 23 of the *Superannuation Guarantee (Administration) Act 1992* (SGAA);

- the ordinary time earnings base in subsection 23(2) of the SGAA includes the amount of any sacrificed ordinary time earnings; and
- the quarterly salary or wages base (for an employer in respect of an employee for a quarter) in subsection 19(1) of the SGAA includes the amount of any sacrificed salary or wages.

(c) After 1 January 2020 in new paragraph 2A, insert footnote A1:

<sup>A1</sup> Pursuant to amendments made to the SGAA by Schedule 7 to the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act 2019*. See also Super Guidance Note [GN 2020/1](#) *Salary sacrifice and super guarantee*.

## **2. Paragraph 13**

(a) Omit the first and second dot points, substitute:

- give rise to a deduction under Subdivision 290-B of the *Income Tax Assessment Act 1997* subject to the usual conditions in that Subdivision; and

(b) At the end of the paragraph, insert new footnote 7:

<sup>7</sup> However, such employer contributions do not reduce an employer's charge percentage under section 23 of the SGAA, or have the other consequences outlined at paragraph 2A of this Determination, in working out any superannuation guarantee shortfall for quarters beginning on or after 1 January 2020.

## **3. Paragraph 16**

At the end of the paragraph, insert 'Paragraph 2A applies in working out any superannuation guarantee shortfall for quarters beginning on or after 1 January 2020.'

This Addendum applies on and from 1 January 2020.

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**Commissioner of Taxation**

13 January 2021

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### ATO references

NO: 1-JWXZ74Q  
 ISSN: 2205-6203  
 BSL: SEO  
 ATOLaw topic: Superannuation ~~ Employers ~~ Meaning of salary and wages

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