



# ***SGD 93/6 - Is a driver who provides courier services an employee of the courier company for the purposes of the Superannuation Guarantee?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *29 April 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.

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## Superannuation Guarantee Determination

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### Is a driver who provides courier services an employee of the courier company for the purposes of the Superannuation Guarantee?

1. The courier could be an employee either at common law or as someone engaged under a contract wholly or principally for his/her labour within subsection 12(3) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA).

#### Common law employee

2. Whether a common law employer/employee relationship exists will depend on an application of the control and integration tests. The presence of the company's right to control the courier points very strongly to employee status. If the courier is integrated into the business organisation of the courier company, the courier is unlikely to be carrying on a business of his/her own.

#### Control test

3. Some indications of control include:
- . company has a **right** to control the driver's activities including timing of deliveries;
  - . jobs are allocated to the courier by the company;
  - . presence of a restraint of trade (no competition) clause;
  - . directions as to company signage to appear on vehicle;
  - . compliance with company directions on maintenance of vehicle;
  - . restrictions on drug taking and liquor consumption;
  - . installation of company equipment in the vehicle;
  - . requirement to wear the company uniform;
  - . requirement to work at specified times;
  - . provision of vehicle by company;
  - . whether the courier is covered by accident insurance.

These are factors which the courts have taken into account in previous cases. Not all factors will be present in every case.

#### Integration test

4. If the control test is inconclusive, the degree of integration into the company's organisation may establish a relationship of employment. Factors which indicate that a courier is not carrying on a business on his/her own account but is part and parcel of the courier company's business include:

- . wearing a company uniform;
- . driving a vehicle which displays the company signage;
- . an ongoing relationship between courier and company;
- . only works for one company.

5. When applying either the control or integration tests, the question of whether the courier or the company provides the vehicle is a relevant but not decisive factor. Generally, a courier will be an employee even if the courier provides a vehicle.

### Contract for labour

6. Even if there is no employer/employee relationship established using the tests stated above, a driver will be an employee of the courier company for the purposes of the SGAA where the driver is engaged under a contract (oral or written) that is wholly or principally for his/her labour. 'Principally' in this context means that the labour content exceeds 50% of the value of the contract.

7. Generally, the value of the various parts of a contract will be specified in the contract. The share of the total value of the contract which is represented by labour should be similar to that which would be determined on a market basis.

8. If the courier is obliged to provide the vehicle under the same contract, its value would be taken into account in determining the proportion of the labour content of the contract. The SGAA applies only to the labour portion of the contract.

9. Where the courier operates through a family company, trust or partnership, the legislation would not apply because any contract between the courier company and the entity would not be for the labour of an individual.

10. Similarly, where the courier does not perform the work under the contract but is free to engage another driver, the legislation would not apply as there is no contract for the labour of a particular person.

### Other arrangements

11. Where the courier company merely operates a depot and contracts only to provide administrative services to otherwise independent couriers, there is no contract for the labour of the courier within the meaning of the SGAA. These independent couriers would generally purchase a courier run and would be free to sell that run to anyone as a separate business. All sale arrangements and any goodwill payments under the contract would be conducted exclusively between the courier and the private purchaser.

### Commissioner of Taxation

29/04/93

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Related Determinations:

Related Rulings: IT 2129

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