

SGD 94/3 - Does the Superannuation Guarantee (Administration) Act 1992 (SGAA) apply to Norfolk Island?

 This cover sheet is provided for information only. It does not form part of *SGD 94/3 - Does the Superannuation Guarantee (Administration) Act 1992 (SGAA) apply to Norfolk Island?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *3 March 1994*

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

Does the *Superannuation Guarantee (Administration) Act 1992* (SGAA) apply to Norfolk Island?

1. No. Legislation has no effect on an external territory unless the legislation makes clear provision for such an effect. The only clear provision made in the SGAA is in section 4 which provides that the SGAA extends to the Territories of Cocos (Keeling) Islands and Christmas Island and has effect as if those Territories were part of Australia. Therefore, the SGAA does not extend to Norfolk Island.
2. Accordingly, the SGAA does not apply to salary or wages paid by a Norfolk Island resident employer to a Norfolk Island resident employee for work done in Norfolk Island.
3. In addition, under the general exclusions section of the SGAA:
 - (a) an employer, whether a resident of Australia or Norfolk Island would not have to make superannuation contributions for salary or wages paid to a Norfolk Island resident employee for work done outside Australia [paragraph 27(1)(b)].
 - (b) a Norfolk Island resident employer would not have to make superannuation contributions for salary or wages paid to an Australian resident employee for work done outside Australia [paragraph 27(1)(c)].
4. However, within the territorial limits of Australia, the SGAA applies to Norfolk Island residents who are employers or employees.

Example 1

Norman, a Norfolk Island resident, operates a gift shop in Norfolk Island and employs two Norfolk Island residents to manage the shop. The SGAA would not apply to Norman.

Example 2

Norman, from the above example, also owns a travel agency in Melbourne which specialises in tours to Norfolk Island. He employs Naomi, an Australian resident, and Roger, a Norfolk Island resident, to work at the agency and to accompany tour groups to Norfolk Island.

Norman would have Superannuation Guarantee obligations in respect of both Naomi and Roger for work done at the agency in Melbourne. Refer to paragraph 4 above.

However, when either Naomi or Roger is accompanying tours groups to Norfolk Island, Norman does not have to make superannuation contributions under the SGAA in respect of the

salary or wages paid for work performed in Norfolk Island itself. Naomi is covered by the exclusion referred to in paragraph 3(a) above, and Roger is covered by the exclusion referred to in paragraph 3(b) above.

Example 3

Darryl is an Australian resident who wanted to obtain a slice of Norfolk Island's lucrative toy market. He appointed an Australian manager to Norfolk Island to promote and market his latest range, a dinosaur named 'Ossiesaurus'. He also employed some Norfolk Island residents to demonstrate Ossiesaurus to various toy retail outlets in Norfolk Island.

Darryl would not have Superannuation Guarantee obligations for his Norfolk Island resident employees. Refer to paragraph 3(a) above.

However, he will have to make superannuation contributions for his Australian manager even though the work is done outside Australia. Because both the employer and the manager are Australian residents, the exclusions in paragraphs 3(a) and 3(b) above do not apply.

Commissioner of Taxation

3/3/94

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Related Determinations:

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