

SGD 95/1 - Is a Visiting Medical Officer (VMO) an employee 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 *1 June 1995*

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

Is a Visiting Medical Officer (VMO) an employee for Superannuation Guarantee purposes?

1. Generally, yes. Under the *Superannuation Guarantee (Administration) Act 1992* (SGAA), employers are required either to make superannuation contributions into a complying fund on behalf of most employees or to pay the Superannuation Guarantee Charge (the charge). The SGAA came into effect from 1 July 1992 and contributions or the charge are calculated from that date.
2. The definition of 'employee' under the SGAA covers not only persons who are employees at common law, but also persons engaged under contracts that are wholly or principally for labour. A VMO will be an employee at common law if the employer has the right to exercise control over the VMO in the performance of the work so that he or she is subject to the employer's orders and directions. Employee relationships are covered in detail in Superannuation Guarantee Ruling SGR 93/1 - Who is an employee.
3. Even if a VMO is not a common law employee most VMOs are employees for SGAA purposes because in their work with hospitals, they are engaged under contracts that require them to perform the duties under the contract personally. A VMO would rarely have a right of delegation under the contract. (This is different from the right to swap shifts).
4. Where a VMO operates through a company, trust or partnership, and that entity is in fact engaged, the SGAA would not apply because any contract for labour would not have been entered into personally. Because of the nature of the work performed by a VMO, for the very reason that they wish to engage **that** VMO's labour, it is rare for an employer (e.g., hospital) to enter into a contract with a VMO's company or partnership.
5. In cases where the VMO is an employee for SGAA purposes, the employer must make superannuation contributions to avoid paying the charge.
6. If the VMO is an employee under the contract for labour definition, contributions should be calculated as a percentage of the labour component of the contract only. The appropriate percentage is set under the SGAA.
7. If the VMO is an employee at common law the employer must make superannuation contributions at a set percentage based on the whole payment (ie. including the materials) rather than just the labour component, unless another earnings base is available to the employer.
8. There are broadly two kinds of arrangements used by hospitals to engage medical practitioners. A VMO is generally engaged at a sessional (hourly) rate or under a fee for service arrangement. The type of arrangement does not affect the VMO's employment status for SGAA purposes. Both are contracts for labour.

Sessional

9. VMOs may be paid at an hourly rate, generally for a set number of quota hours and, in addition, may receive an on call allowance or a call back loading. An on call allowance is a payment made to a VMO for attending, or holding oneself available, at a particular time (or on a regular basis). The sessional contract subjects the VMO to the hospital's direction as to which patients they treat and when.

Fee For Service

10. A fee for service arrangement involves a payment for each service provided by the VMO. The services are to be provided at times agreed upon by the VMO and the hospital, as in most cases practitioners attend the hospital at particular times and conduct a private practice away from the hospital during the rest of the week. Generally, the VMO is subject to the control of the hospital to the extent that he or she is to abide by hospital policies and procedures. The fee for service, the on call payments and the call back loading would be for ordinary hours of work.

Background practice costs

11. Sometimes the remuneration that a VMO receives may include a component for background practice costs. The payment would still be part of the labour component of the contract.

Superannuation allowances

12. Some payments to VMOs include a superannuation allowance. This is neither an employer nor an employee contribution because the payment is not made into a superannuation fund. It is simply part of a process which calculates the total remuneration of the VMO.

Personal superannuation contributions

13. Because VMOs can reasonably expect their employers to provide them with superannuation benefits, they are not entitled to an income tax deduction for any personal superannuation contributions if their assessable income from the VMO employment is at least 10% of their total assessable income (see the *Income Tax Assessment Act 1936*).

Commissioner of Taxation

01/06/95

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Related Determinations:

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