



***SGD 98/2 - Superannuation guarantee: are superannuation contributions, which result from a salary sacrifice arrangement, made by the employer or are they made by the employee?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *25 November 1998*

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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### **Superannuation guarantee: are superannuation contributions, which result from a salary sacrifice arrangement, made by the employer or are they made by the employee?**

1. A salary sacrifice arrangement is one where an employee forgoes part of the salary he or she would otherwise receive, in return for other benefits (e.g., superannuation benefits).

#### *Example A*

2. *Ann's remuneration is \$31,000. Under a salary sacrifice arrangement, Ann agrees to accept \$30,000 in wages and \$1,000 in superannuation contributions.*

3. The superannuation contribution is made **by the employer** if the reduced salary is the amount the employee includes as assessable income for income tax purposes.

#### **Note**

4. The level of payment of employee entitlements and benefits that make reference to 'salary', such as long service leave, sick leave, holiday pay and superannuation contributions, is governed by the agreement between the employer and the employee or the rules of the superannuation fund. The 'salary' level upon which employee entitlements are based does not determine whether the superannuation contributions are made by the employer or the employee.

#### *Example B*

5. *Assume the facts in Example A. If Ann's assessable income is the reduced salary component of \$30,000, the \$1,000 superannuation contribution is made by Ann's employer and not Ann. Ann's employer gets a \$31,000 tax deduction, consisting of \$30,000 wages and \$1,000 superannuation contributions.*

6. The superannuation contribution is made **by the employee** if the arrangement is no more than a redirection of the employee's salary. In some cases, employers simply withhold an amount from an employee's salary to pay into a superannuation fund on behalf of the employee. The amount withheld continues to be included in the employee's assessable income. Therefore, the contribution is made by the employee, not the employer, and does not count towards the employer's obligations under the Superannuation Guarantee legislation.

#### *Example C*

7. *Ann's employer withholds an amount of \$1,000 from Ann's salary and pays it into a superannuation fund on Ann's behalf. Ann is still required to pay tax on an assessable income of \$31,000. The contribution is made by Ann and not her employer.*

**Commissioner of Taxation**

25 November 1998

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FOI INDEX DETAIL: [Reference No.](#) I 1017882

Previously released as SGD 93/4

[Related Determinations:](#)

[Related Rulings:](#)

[Subject Ref:](#) assessable income; employee superannuation contributions; employer superannuation contributions;  
salary and wages income; salary sacrifice; salary sacrifice arrangement; superannuation contributions

[Legislative Ref:](#)

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[ATO Ref:](#) NAT 92/7711-1; NAT 98/12605-8

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