

# ***SGR 2009/1A1 - Addendum - Superannuation guarantee: payments made to sportspersons***

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## Addendum

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### Superannuation Guarantee Ruling

#### Superannuation guarantee: payments made to sportspersons

This Addendum amends Superannuation Guarantee Ruling SGR 2009/1 to take into account the withdrawal of Superannuation Guarantee Rulings SGR 94/4 and SGR 94/5 on 1 July 2009 and the replacement of those Rulings with Superannuation Guarantee Ruling SGR 2009/2. SGR 2009/2 expands upon and clarifies the Commissioner's view on the meaning of 'ordinary time earnings' (OTE) and also deals with the relationship between OTE and 'salary or wages'.

#### **SGR 2009/1 is amended as follows:**

**1. Footnote 3**

Omit the footnote; substitute:

<sup>3</sup> See also Superannuation Guarantee Ruling SGR 2009/2.

**2. Footnote 5**

Omit the footnote; substitute:

<sup>5</sup> See also Superannuation Guarantee Ruling SGR 2009/2.

**3. Paragraph 21**

After the first sentence; insert footnote:

<sup>5A</sup> See paragraphs 16 and 17 and 203 to 210 of SGR 2009/2 regarding ordinary hours of work when they are not specified in a relevant award or agreement.

**4. Footnote 34**

Omit the footnote; substitute:

<sup>34</sup> There are some limited circumstances in which certain payments made by a common law employer will not be salary or wages, for example amounts paid to the employee as a reimbursement (see SGR 2009/2).

**5. Paragraph 41**

Omit 'Indictors'; substitute 'Indicators'.

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**6. Paragraph 42**

Omit 'indictors'; substitute 'indicators'.

**7. Paragraph 93**

Omit the last sentence, substitute:

It is considered that where a common law employment relationship exists, that additional amount paid to the football player is more characteristic of an incentive payment or bonus that arises in the course of ordinary hours of work.

**8. Footnote 47**

Omit the footnote; substitute:

<sup>47</sup> See also paragraphs 28 and 29 of SGR 2009/2 for discussion of when bonuses are OTE.

**9. Footnote 48**

Omit the footnote; substitute:

<sup>48</sup> See also paragraphs 66 and 274 to 278 of SGR 2009/2 for discussion of when bonuses are salary or wages.

**10. Paragraph 122**

Omit the second sentence, substitute:

For example, as was explained at paragraphs 74 to 76 of this Ruling, the payment of prize money will not make the recipient an employee under subsection 12(8).

**11. Paragraph 127**

Omit the paragraph; substitute:

127. 'Ordinary time earnings' (OTE) is the amount an employee earns for their ordinary hours of work.<sup>74</sup> From 1 July 2008 all employers must use OTE to calculate the level of superannuation contributions necessary in order to meet their SG obligations in respect of an eligible employee.<sup>75</sup> 'Ordinary time earnings' is defined in subsection 6(1) 'in relation to an employee'. Therefore, for payments to constitute OTE they must be made to a person who is an employee in accordance with section 12. 'Earnings' for the purposes of the definition of OTE is the remuneration paid to the employee as a reward for the employee's services.

**12. Paragraph 129**

Omit the paragraph; substitute:

129. A sportsperson's ordinary hours of work would not usually be specified in an applicable award or agreement. This is because sporting activities are not typically performed in regular defined shifts such as an office clerk's regular 'business hours'. Therefore, the 'ordinary hours of work' for sportspersons would be the normal, regular, usual or customary hours worked by the sportsperson taking into account all relevant circumstances.<sup>76</sup> However, if it is not possible or practical to determine the normal, regular, usual or customary hours, the actual hours worked should be taken as the ordinary hours of work.<sup>77</sup> Where a sportsperson is employed under a contract, their ordinary hours of work will generally be the agreed hours of work if specified under that contract. In other cases, the actual hours worked by the sportsperson will usually be their ordinary hours of work.

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<sup>74</sup> Subsection 6(1). For a full explanation of ordinary time earnings see SGR 2009/2.

<sup>75</sup> See amendments made to the SGAA by *Superannuation Laws Amendment (2004 Measures No. 2) Act 2004*.

<sup>76</sup> See also paragraphs 16 and 17 and 203 to 210 of SGR 2009/2 for further explanation.

<sup>77</sup> See also paragraphs 16 and 17 and 203 to 210 of SGR 2009/2 for further explanation.

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## 13. Paragraph 130

Omit the paragraph; substitute:

130. An employee's 'earnings', for the purpose of the definition of OTE, is the remuneration paid to the employee as a reward for the employee's services. The practical effect for superannuation guarantee purposes is that the expression 'earnings' is synonymous with the term 'salary or wages'.<sup>77A</sup> Payments to an employee which are not given as remuneration for their services are not included in OTE as such payments would not be 'salary or wages'. For example, a payment made to reimburse an employee's out of pocket expenses is not salary or wages and therefore not OTE.<sup>78</sup> Also, for the purposes of the definition of OTE, it must be determined whether the earnings in question are *in respect of* ordinary hours of work. All amounts of earnings in respect of employment are in respect of the employee's ordinary hours of work unless they are remuneration for working overtime hours, or are otherwise referable only to overtime or to other hours that are not ordinary hours of work.

## 14. Paragraph 133

Omit the paragraph.

## 15. Related Rulings/Determinations

Omit:

SGR 94/4; SGR 94/5

Insert:

SGR 2009/2

This Addendum applies on and from 1 July 2009.

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**Commissioner of Taxation**  
24 February 2010

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ATO references

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<sup>77A</sup> See paragraphs 12 and 185 to 187 in SGR 2009/2 for further explanation.

<sup>78</sup> See paragraphs 46, 48, 57 to 59C, 72 to 76, and 255 to 270 of SGR 2009/2 for further explanation of payments which are not regarded as 'salary or wages'.