

SGR 94/1 - Superannuation guarantee: Earnings bases

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Superannuation Guarantee Ruling

Earnings bases

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What this Ruling is about

1. This Ruling explains:
 - (a) what an earnings base is;
 - (b) which earnings bases can be used for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, (the SGAA);
 - (c) how an earnings base is measured;
 - (d) how earnings bases work when contributions are made to more than one fund; and
 - (e) how a contribution made in accordance with an earnings base reduces the employer's charge percentage
2. 'Earnings base' is one of the key concepts under the SGAA. The SGAA imposes a tax on employers who do not make the minimum level of superannuation contributions for each employee. That minimum level is calculated as a percentage of each employee's earnings base.
3. When an employer makes a superannuation contribution to a complying superannuation fund based on an employee's earnings base, it has the effect of reducing the employer's charge percentage (sections 22 and 23). An employer can reduce a charge percentage to nil.

Ruling

What an earnings base is

4. A contribution to a superannuation fund made by an employer for an employee, will be based on a requirement of:
 - the fund's trust deed; or

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- a law of the Commonwealth, of a State or of a Territory; or
- an industrial award; or
- an agreement with the employee.

5. If that requirement says that contributions are to be based on an amount which is related to the employee's earnings, then *that amount* is an earnings base.

Examples:

If the employer is contributing to a fund, and its trust deed says that the required contribution is 5% of the employee's salary at last birthday, then an earnings base for those contributions is the employee's salary at last birthday.

If the employer is contributing to a fund in accordance with an industrial award which provides that the required contribution is 3% of the employee's ordinary time earnings, the earnings base is whatever the award defines as ordinary time earnings.

Which earnings base should be used?

Standard employee earnings bases

6. Some laws and industrial awards require a superannuation contribution which is a percentage of the earnings of some 'standard' employee. For example, an award might require a contribution of 4% of the award wage of a class 2 officer. In such cases, the earnings of that standard employee are an earnings base for the employees entitled to that contribution (subsection 13(5)).

Example:

Suppose an award or law requires an employer to contribute to a fund and the required contribution is 3% of the award wage of a class 2 officer. The earnings base for **any** employee entitled to a contribution, is this class 2 officer's award wage.

7. A reference to the average of the rates paid to various classes of employees is not an earnings base for the purposes of the SGAA because it is related neither to the earnings of the employee nor of a member of a class of employees (subsection 13(5)).

Example:

Suppose that an industrial award requires contributions to be made at the rate of 3% of the average salary paid to employees in classes 2 to 10. This would not be an earnings base for the SGAA. Contributions would have to be measured against another earnings base (for example, one in a fund trust deed or ordinary time earnings).

Limits on use of standard employees earnings bases

8. Standard employee earnings bases are not acceptable if they are not in an award or law which was operative immediately before 21 August 1991 (subsections 13(5) and 14(2A)). [Note paragraph 14(2B)(a) of the SGAA for special provisions relating to the New South Wales Coal Mining Industry Statutory Superannuation Fund (Salary Sacrifice) Agreement.]

Earnings bases from flat dollar contributions

9. Some industrial awards require a superannuation contribution which is a dollar amount. For example, an award might require a contribution of \$15 per week. If the amount of the contribution is required (whether by the award or otherwise) to be adjusted when the earnings of a specified class of employees change, then the earnings of that specified class (called the adjustment earnings) are deemed to be an earnings base for the employees entitled to that contribution (subsection 25A(3)).

Example:

An award specifies a flat dollar contribution of \$15 for each adult employee. The \$15 is required to be increased in line with the base rate earnings of a class 6 truck driver covered by the award. The base rate earnings of a class 6 truck driver is an earnings base for employees entitled under the award to the \$15 contribution.

10. If the award does not allow for an adjustment to the flat dollar amount, but the trust deed of the fund contains an adjustment provision, this is also acceptable under section 25A of the SGAA.

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Flat dollar contributions and part time employees

11. If an award specifies a flat dollar contribution for a part time employee, the notional earnings base for the part time employee will be a proportion of the adjustment earnings (Paragraph 25A(3)(b)). A part time employee is defined in subsection 6(1) to mean a person who is employed to work not more than 30 hours per week.

Example:

If the adjustment earnings of a full time class 6 truck driver who works 40 hours per week is \$7 500 for a quarter (13 weeks), then a part time employee under the award who works 24 hours per week would have a notional earnings base of:

$$\frac{24 \times 13 \text{ weeks}}{40 \times 13 \text{ weeks}} \times \$7\,500 = \$4\,500$$

If the weekly flat dollar contribution specified in the award is \$9 per week for part time employees, the calculation of the percentage contributed for the quarter would be:

$$\frac{\$9 \times 13 \text{ weeks}}{\$4\,500} = 2.60\%$$

Limits on use of flat dollar earnings bases

12. If an award provides for a flat dollar contribution, there is only a deemed earnings base if:

- the contribution is required (whether by the award or otherwise) to be adjusted if the earnings of an identified class of employees increase (paragraph 25A(1)(b)); and
- the award was operative immediately before 21 August 1991 and has not since been amended in a way that reduces the earnings base (paragraph 25A(2)(b)). It is not necessary for the employer to have been contributing under that award at 21 August 1991.

13. If the flat dollar, when expressed as a percentage, is less than the employer's charge percentage for the employee, the excess percentage must be measured against another earnings base. In the absence of another suitable earnings base, the default earnings base of ordinary time earnings must be used to calculate the excess. The Commissioner has issued a separate Ruling on ordinary time earnings.

Example:

An award specifies a weekly flat dollar contribution of \$15 for each adult employee. The \$15 is required to be increased in line with the base rate earnings of a class 6 truck driver covered by the award. The base rate earnings of the class 6 truck driver in a quarterly contribution period are \$7 500. The percentage is calculated as follows:

$$\frac{\$15 \times 13 \text{ weeks}}{\$7\,500} = 2.6\%$$

If the employer's charge percentage is 3%, the remaining 0.4% must be calculated using another earnings base; for example one contained in the trust deed of the fund, or ordinary time earnings. The notional earnings base of the class 6 truck driver cannot be used to measure contributions above the \$15 per week.

14. If the flat dollar award does not satisfy section 25A of the SGAA, the employer must use another earnings base. In the absence of another suitable earnings base, this would be the default earnings base of ordinary time earnings.

Limits on use of other earnings bases

15. An earnings base, other than a flat dollar or standard employee earnings base, can only be used if:

- it is any other earnings base in an industrial award. It is not necessary for the award to have been operative immediately before 21 August 1991 (paragraphs 13(1)(a) and 14(1)(a), and subsections 13(2), 14(2A) and (14(3)); or
- the employer was contributing in accordance with the employee's earnings base under paragraph 13(5)(b), (whether contained in a law, scheme or arrangement) for the benefit of any employee immediately before 21 August 1991; and that base has not been reduced since then (subsections 13(1) and (4)); or
- it is a base at least as large as ordinary time earnings (subsection 14(3)).

[Note section 13A of the SGAA for special provisions relating to the Seafarers' Retirement Fund.]

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Reducing the earnings base

16. If an arrangement, law or scheme that is used to determine an employee's notional earnings base is amended so that the employee's notional earnings base in a contribution period is reduced to an amount less than the employee's ordinary time earnings in that period, the appropriate earnings base is ordinary time earnings (subsections 13(4) and 14(3)). This does not apply if an earnings base in an award is reduced. Such an earnings base can still be used (subsection 14(3)).

Example:

Suppose an agreement requires a superannuation contribution of 5% of an employee's base salary plus allowances. If the agreement is varied so that the contribution is 5% of the employee's base salary (excluding allowances), the earnings base will have been reduced. As a result of the reduction, the new earnings base of base salary is less than ordinary time earnings and is not acceptable for the SGAA. (If the requirement had been in an award rather than in an agreement, the new earnings base would be acceptable.)

Merger of superannuation funds

17. If two superannuation funds merge, an employer may lose the right to use one of the earnings bases it had in one of those funds. Any new earnings base created as a result of the merger, and any old earnings base if the contributions are no longer being made to the same fund, can only be used if it satisfies the provisions of section 14 rather than those of section 13.

What if the employee has no acceptable earnings base?

18. If a particular employee has no acceptable earnings base, then the employee's ordinary time earnings, as defined in the SGAA, will be the default earnings base (subsection 14(3)).

What if an employee has several earnings bases?

19. If a contribution satisfies only one earnings base, then it should be used to measure the percentage contributed for that employee.

20. If a contribution satisfies two or more earnings bases, then the contribution can be measured against any of those earnings bases.

Example:

Ace Pty Ltd agrees with its employee, John, to contribute an amount equal to 3% of John's gross wage into the company super fund. John subsequently becomes covered by an award which requires 3% of his gross wage plus allowances to be paid into an award fund.

- (i) Suppose the company makes a contribution to the company fund but it is not an award fund. Only the earnings base in the agreement is satisfied by the contribution (the award earnings base is not satisfied because the contribution to a non-award fund is not in accordance with the award). Therefore, the contribution must be measured against John's gross wage.
- (ii) Now, suppose that the company makes a contribution to the award fund rather than to the company fund. Only the award earnings base is satisfied, so the contribution must be measured against the sum of John's gross wage and allowances.
- (iii) Finally, suppose that the company fund was also the award fund and the company contributes to it. Now, both earnings bases are satisfied and the contribution can be measured against either of them.

Earnings bases in defined benefit funds

21. If an employer is providing superannuation benefits through a defined benefit fund, the earnings base rules set out in sections 13 and 14 still apply (Regulation 5). The notional employer contribution rate will be specified in a benefit certificate.

Discretionary earnings bases

22. Some trust deeds of superannuation funds give an employer a discretion whether to include certain additional items in the earnings base. If the employer has exercised the discretion to include some discretionary items, the earnings base would be the total of the earnings base in the trust deed *and* the items which the employer has included as a result of the exercise of the discretion.

23. If a discretion is exercised to include extra items but the deed is later amended after 20 August 1991 to exclude them, the earnings base will have been reduced. If the new base is less than ordinary time earnings, the employer will have to use another earnings base at least as large as ordinary time earnings instead.

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Example:

Under a superannuation scheme, the earnings base is defined as "basic annual salary or wages but not including fees, commissions, overtime payments, bonuses except to the extent that the employer decides". If the employer had exercised the discretion prior to 21 August 1991, to include commissions, the earnings base would be basic annual salary or wages plus commissions. If the employer had not exercised the discretion, the earnings base would be basic annual salary. If the deed is later amended to exclude commissions, the earnings base will have been reduced (see paragraph 15).

Measuring the earnings base

24. Employers will measure the amount of the contribution as a percentage of the value of the earnings base. As this percentage is a credit against the employer's charge percentage, it is important to know what the value of the earnings base is.

25. The value of an employee's earnings base is the lesser of the actual amount of the base or the maximum contributions base (subsections 13(3) and 14(4)). In each half yearly contribution period in 1992-93, the maximum contributions base is \$40,000 (subsection 15(1)). In each quarterly contribution period in later years, the maximum contributions base is \$20,000, indexed annually to Average Weekly Ordinary Time Earnings (subsection 15(2)).

26. An amount of salary or wages that is excluded from the calculation of any shortfall by section 27 or 28, is also excluded from the employee's notional earnings base (subsection 23(11)).

When is the value of the earnings base calculated?

27. An employer would usually calculate the amount of the earnings base at the end of the contribution period. However, the definition of the earnings base is determined (subsections 13(2) and 14(2)) at the latest of:

- the first day of the contribution period; or
- the first day of the employee's employment; or
- the day on which the employer began to contribute to the fund.

Example 1:

Assume that an employer was contributing to a superannuation fund for the benefit of an employee in accordance with a fund's trust deed.

The trust deed required the employer to make a contribution equal to 2% of an employee's gross salary at last birthday. Part way through a contribution period, the deed was amended so that the required contribution became 2% of the base wage. For superannuation guarantee purposes, the earnings base is defined at the start of the contribution period (ie. gross salary at last birthday). The amount of the gross salary at last birthday is measured at the end of the contribution period.

From the start of the next contribution period, the new earnings base (base wage) would replace the old one.

If this new earnings base is narrower than the previous earnings base, it may not be acceptable under the SGAA. If that is the case, the default earnings base of ordinary time earnings would be used.

Example 2:

Suppose that an employee has an earnings base in an award that requires contributions of 3% of salary. The employee's salary at the beginning of a contribution period is \$800 per week. In the middle of a contribution period the employee's salary is increased to \$850 per week. The contributions would be based on \$800 per week until the date of the pay rise, and based on \$850 for the remainder of the contribution period.

Contributions to more than one fund

28. Where an employer makes contributions to more than one fund on behalf of an employee, and each fund is a complying fund, the total of these contributions would count towards the SGAA.

Example:

An employer has an agreement with an employee to pay 1% of the employee's gross salary into a superannuation fund. The employee is also covered by an award that requires 3% of base salary to be paid into an award fund. In addition, the employer makes a contribution of 1% of gross salary to a

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company superannuation fund. All funds are complying funds. The three separate contributions amounting to 5% would count as a credit towards the employer's charge percentage.

Date of effect

29. This Ruling sets out the current practice of the Australian Taxation Office and is not concerned with a change in interpretation. Consequently, it applies from the time that the legislation commenced to operate.

Commissioner of Taxation

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