


SGR 94/5 - Superannuation guarantee: Salary or Wages

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 This document has changed over time. This is a consolidated version of the ruling which was published on *26 November 2003*



Superannuation Guarantee Ruling

Salary or wages

| contents | para |
|--|-----------|
| What this Ruling is about | 1 |
| Previous Rulings | 4 |
| Ruling | 6 |
| Salary or wages? | 6 |
| Amounts which are included in 'salary or wages' | 7 |
| Allowances | 7 |
| Ordinary Time Earnings | 9 |
| Payments made to employees subject to the Prescribed Payments System (PPS) | 10 |
| Bonuses and ex gratia payments | 11 |
| Commission | 13 |
| Payments to Directors, etc. | 14 |
| Payments to Government office holders | 15 |
| Artists and sportspersons | 17 |
| Salary or wages does not include | 18 |
| Domestic or private remuneration | 18 |
| Fringe benefits | 19 |
| Reimbursements | 20 |
| Date of effect | 22 |
| Examples | 23 |

Superannuation Guarantee Rulings 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 Rulings and Determinations.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Ruling is about

1. This Ruling explains the meaning of the words 'salary or wages' in the *Superannuation Guarantee (Administration) Act 1992* (SGAA).
2. An employer needs to use 'salary or wages' in calculating:
 - 'annual national payroll' in the base year (subsection 6(1)); and
 - each individual superannuation guarantee shortfall (sections 18 and 19).
3. This Ruling does not examine how to calculate 'annual national payroll' or how to calculate an individual superannuation guarantee shortfall.

Previous Rulings

4. This Ruling replaces SGR 93/4 which is withdrawn from the date of this Ruling.
5. This Ruling takes into account any changes to the SGAA up until the date of this Ruling. The proposed measures announced by the Treasurer on 28 June 1994 are not included in this Ruling.

Ruling

Salary or wages?

6. Under the SGAA, 'salary' or 'wages' have their ordinary meanings. The *Macquarie Dictionary* (2nd revised edition) defines these as:

Salary 'a fixed periodical payment, usually monthly, paid to a person for regular work or services, especially work other than that of a manual, mechanical, or menial kind.'

Wage '1. that which is paid for work or services, as by the day or week.
2. the share of the products of industry received by labour for its work, as distinct from the share going to capital.
3. recompense or result...'

Amounts which are included in 'salary or wages'

Allowances

7. An allowance is a payment to an employee for a predetermined amount to cover an estimated expense (e.g. clothing allowances) or to compensate for particular working conditions (e.g. a site allowance). It is paid regardless of whether or not the employee incurs the expense.

8. Allowances are 'salary or wages', unless they are fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) (e.g. a living away from home allowance).

8A. **An expense allowance.** An expense allowance is one which is paid with the expectation that the money will be fully expended in deriving income. For example, car allowance paid to real estate agents. This type of expense should not be included in salary or wages for superannuation guarantee purposes and it follows that these allowances do not form part of OTE. **These allowances are NOT included in salary or wages for superannuation guarantee purposes.**

8B. **Other allowances e.g. dirt, locality, etc.** Other allowances are those which are paid to employees and are not expended in the course of the employee's work. For example, those allowances which are paid because of particular conditions applying to the job, such as height, dust or danger allowances. These do form part of salary or wages and OTE. **These allowances are included in salary or wages and OTE for superannuation guarantee purposes.**

Ordinary Time Earnings

9. Payments that form part of 'Ordinary Time Earnings' (OTE) also form part of 'salary or wages'. However, payments specifically excluded from OTE will not necessarily be excluded from the definition of 'salary or wages'. (The Commissioner has explained OTE in a separate Ruling.)

Payments made to employees subject to the Prescribed Payments System (PPS)

10. The labour portion of any payment to a person who is:
- a) an 'employee' under subsection 12(3) of the SGAA; and
 - b) in receipt of a payment to which the PPS, (as defined in Part VI of Division 3A of the *Income Tax Assessment Act 1936* (ITAA), applies)

will form part of that person's salary or wages.

Bonuses and ex gratia payments

11. A **bonus** will form part of an employee's 'salary or wages' where the bonus is paid in respect of ordinary hours of work. The *CCH Macquarie Dictionary of Employment and Industrial Relations* defines a bonus as:

'a payment above the regular basic rate or standard pay, e.g. a payment for overtime or shiftwork, or attendance, an allowance for work under exceptional conditions, as well as an incentive payment made under a piecework system or incentive scheme or as a production bonus.'

12. For the definition of 'salary or wages', a bonus that is an *ex gratia* payment (including payments in respect of overtime) will be part of an employee's 'salary or wages' if that payment is made in an employment context and not on a personal basis.

Commission

13. Commission payments are specifically included as 'salary or wages' under paragraph 11(1)(a) of the SGAA. A commission includes any payments made to an employee on the basis of performance criteria (e.g. a payment based on percentage of sales).

SGR 94/5

Payments to Directors, etc.

14. Payments for the performance of duties as a member of the executive body of a body corporate are included as 'salary or wages' under paragraph 11(1)(b) of the SGAA.

Payments to Government office holders

15. The SGAA includes as 'salary or wages' the remuneration of:

- members of the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory (paragraph 11(1)(c));
- people in the service of, or holding an appointment, office or position with, the Commonwealth, a State or a Territory (including members of the defence force and the police forces) (paragraph 11(1)(e));
- members of local government councils (paragraph 11(1)(e)).

Note: the Treasurer announced in a statement on 28 June 1994 that legislation will be introduced to exempt allowances paid to Local Government Councillors from the scope of the Superannuation Guarantee with effect from 1 July 1993.

16. Remuneration is a payment for service and not a mere reimbursement of actual expenses. It includes amounts described as allowances. It does not include fringe benefits within the meaning of the FBTAA.

Artists and sportspersons

17. Paragraph 11(1)(d) of the SGAA includes as 'salary or wages' payments to persons for performing in:

- or for providing services in connection with, artistic, sporting or promotional displays;
- or in connection with, the making of any film, tape or disc or of any television or radio broadcast.

Salary or wages does not include

Domestic or private remuneration

18. Subsection 11(2) of the SGAA **excludes** from 'salary or wages' remuneration under a contract for the employment of a person, for not more than 30 hours per week, in work that is wholly or principally of a domestic or private nature.

Fringe benefits

19. Subsection 11(3) of the SGAA **excludes** from 'salary or wages' fringe benefits as defined in the FBTAA.

Reimbursements

20. Reimbursements are not 'salary or wages'. A payment is a reimbursement if the employee is compensated exactly for all or an agreed part of an expense already incurred, although not necessarily disbursed. With reimbursements in general, the employer considers the expense to be its own and the employee incurs the expenditure on behalf of the employer. A requirement that the employee vouch expenses lends weight to a presumption that a payment is a reimbursement rather than an allowance.

Note: The Commissioner will treat a payment at a set rate per kilometre as a reimbursement if the expense amount is calculated on a reasonable basis. For example, calculations made with reference to the statutory formula in the income tax laws would be considered reasonable.

21. An employer may make a payment in advance to an employee to enable the employee to expend an amount of money. Where the employee is required to account for any unspent monies to the employer, the payment is neither an allowance nor a reimbursement. In this situation the employee expends the money as an agent for the employer. The payment is not included in 'salary or wages'.

Date of effect

22. 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.

Examples

Salary or wages includes

23. The following are examples of payments that form part of 'salary or wages':
- the labour portion of a payment to a person who works under a contract that is wholly or principally for his or her labour;
 - overtime and penalty rates;
 - bonuses and commission payments;
 - payments for unused annual leave, long service leave and leave loading;
 - redundancy and other eligible termination payments;
 - payments for sick leave, bereavement leave, maternity and paternity leave and other similar types of leave;
 - salary or wages which are subsidised by a Government payment (e.g. job start allowance);
 - workers' compensation top-up payments, paid by the employer to the employee, for actual hours required to attend or perform work;
 - top-up payments to an employee, e.g. when serving on jury duty or with reserve forces, etc.;
 - payments made under the Community Development Employment Program (CDEP).

Salary or wages does not include

24. The following are examples of payments that are **not** part of 'salary or wages':
- payments to a person to enter into a restraint of trade;
 - reimbursements of expenses;
 - pension payments and social security benefits;
 - partnership and trust distributions;
 - dividends;
 - workers' compensation payments, including top-up payments paid by an employer, to employees who do not attend or perform work.

ATTACHMENT A

CHECKLIST - SALARY/WAGES & OTE

| Payment Type | Salary or Wages? | OTE? |
|--|-------------------------|-------------|
| Allowances paid (other than a reimbursement of expenses) | Yes | Yes |
| Reimbursement of expenses (e.g. travel costs) | No | No |
| Bonuses that do not relate to specific performance criteria - (e.g. Christmas bonuses) | Yes | No |
| Other bonuses | Yes | Yes |
| Commission | Yes | Yes |
| Over award payments | Yes | Yes |
| Shift loading | Yes | Yes |
| Overtime | Yes | No |
| Casual loading | Yes | Yes |
| Benefits subject to fringe benefits tax | No | No |
| Workers compensation payments, including top-up payments, where no work is performed | No | No |
| Workers compensation payments, including top-up payments, paid by the employer where work is performed | Yes | Yes |
| Top-up payments when serving on jury duty or with reserve forces etc | Yes | No |
| Payments when on maternity or paternity leave | Yes | No |
| Pay for annual holiday leave taken | Yes | Yes |
| Government (wage) subsidies, (e.g. job start allowance) | Yes | Yes |

SGR 94/5

| Payment Type | Salary or Wages? | OTE? |
|--|-------------------------|-------------|
| Annual leave loading | Yes | No |
| Pay for sick leave taken | Yes | Yes |
| Pay for long service leave taken | Yes | Yes |
| Accrued annual leave, long service leave and sick leave paid as a lump sum on termination | Yes | No |
| Payments in lieu of notice | Yes | No |
| Redundancy payments | Yes | No |
| Other payments made by an employer on termination of employment | Yes | No |
| Director's fees | Yes | Yes |
| Payments for performance in, or provision of services relating to, entertainment, sport, promotions, films, discs, tapes, TV, or radio | Yes | Yes |
| Payments to a contractor who is an employee under the SGAA (labour portion only) | Yes | Yes |
| Dividends | No | No |
| Partnership and trust distributions | No | No |
| Payments for entering into a restraint of trade agreement | No | No |
| Payments for domestic or private work under 30 hours per week | No | No |

Commissioner of Taxation

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page 9 of 9

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- SGAA 11(1)(b);
- SGAA 11(1)(c);
- SGAA 11(1)(d);
- SGAA 11(1)(e);
- SGAA 11(2);
- SGAA 11(3);
- SGAA 12(3);
- SGAA 18;
- SGAA 19

subject references

- allowance
- bonus
- commission
- reimbursement
- remuneration
- salary
- wages