



Super Update

Federal Budget 2009

25 May 2009

Superannuation Guarantee Ruling (SGR 2009/2): Meaning of ordinary time earnings (OTE) & salary and wages

The ATO have recently issued a final ruling (SGR 2008/2) that updates their interpretation of both ordinary time earnings (OTE) and salary and wages for Superannuation Guarantee (SG) purposes. This ruling comes into effect for payments made to employees in the quarter beginning on 1 July 2009 and all later quarters. It replaces previous rulings SGR 94/4 (OTE) and SGR 94/5 (salary and wages).

Unlike earlier drafts, the final ruling has narrowed its interpretation of circumstances where overtime payments are to be included in OTE. However, the ruling confirms that SG applies on certain termination payments in lieu of notice.

This Super Update lists types of payments made to an employee and whether or not they are included in the definition of Salary or Wages and OTE. The list is not exhaustive and is only intended for general guidance. For full details of definitions of Salary or Wages and OTE refer to SGR 2009/2.

It should be noted that this ruling does not deal with the following type of payments:

- Payments made while a worker is on paid parental leave or other kinds of ancillary leave.
- 'Top-up payments', such as those made while serving on jury duty or with defence reserve forces.
- The Government has announced that it intends to clarify the superannuation guarantee status of these types of payments.

Other things to note are:

- OTE will always be part of an employee's salary or wages. But an employee's salary or wages may include amounts that are not OTE.
- The total of OTE in respect of an employee for a quarter cannot exceed the maximum contribution base for the quarter. For the 2008/09 financial year the maximum contribution base is \$38,180. This amount is indexed annually taking into account movements in full-time adult average weekly ordinary time earnings.

Payments to an employee in relation to:	Salary or wages?	OTE?
Awards and agreements		
A simple overtime situation	Yes	No
Overtime hours – agreement prevailing over award	Yes	No
Agreement supplanting award removes distinction between ordinary hours and other hours	Yes	Yes
No ordinary hours of work stipulated	Yes	Yes
Casual employee		
• shift-loadings	Yes	Yes
• overtime payments	Yes	No
Casual employee whose hours are paid at overtime rates due to a 'bandwidth' clause	Yes	No
Piece-rates – no ordinary hours of work stipulated	Yes	Yes

Payments to an employee in relation to:	Salary or wages?	OTE?
Overtime component of earnings based on 'hourly driving rate' formula stipulated in award	Yes	No
Payments made in respect of ordinary hours of work: <ul style="list-style-type: none"> Over-award payments Shift-loading Commission 	Yes Yes Yes	Yes Yes Yes
Payments made in respect of overtime or other than ordinary hours of work: <ul style="list-style-type: none"> Over-award payments Shift-loading Commission 	Yes Yes Yes	No No No
Allowances		
Allowance by way of unconditional extra payment	Yes	Yes
Expense allowance expected to be fully expended	No	No
Danger allowance	Yes	Yes
Retention allowance	Yes	Yes
Hourly on-call allowance in relation to <ul style="list-style-type: none"> ordinary hours overtime 	Yes Yes	Yes No
Payment of expenses		
Reimbursement	No	No
Petty cash	No	No
Reimbursement of travel costs	No	No
Payments for unfair dismissal	No	No
Workers' compensation <ul style="list-style-type: none"> Returned to work Not working 	Yes No	Yes No
Leave payments		
Annual leave	Yes	Yes
Leave loadings	Yes	No
Salary or wages received at the ordinary time rate in respect of public holidays, rostered days off and the like	Yes	Yes
Lump sum payment on termination of employment being in respect of: <ul style="list-style-type: none"> Unused sick leave Unused annual leave Unused long service leave 	Yes Yes Yes	No No No
Lump sum payments of unused leave (other than on termination)	Yes	Yes
Termination payments		
Termination payments in lieu of notice	Yes	Yes
Redundancy payments	No	No
Compensation for unfair dismissal	No	No
Bonuses		
Performance bonus	Yes	Yes
Bonus labelled as ex-gratia but in respect of ordinary hours of work	Yes	Yes
Christmas bonus	Yes	Yes
Bonus in respect of overtime only	Yes	No
Sign-on bonus		

Payments to an employee in relation to:	Salary or wages?	OTE?
<ul style="list-style-type: none"> Assessable income Referable to separate restrictive covenant 	Yes No	No No
Other		
Directors' fees	Yes	Yes
Payments to persons who perform, present, participate in or provide services in connection with any music, play, dance, entertainment, sport, display or promotional activity involving the exercise of intellectual, artistic, musical, physical or other personal skills;	Yes	Yes
Payments to persons who perform or provide services in connection with the making of any film, tape or disc or of any television or radio broadcast.	Yes	Yes
Payments to a contractor who is an employee under the SGAA (labour portion only)	Yes	Yes
Dividends	No	No
Partnerships and trust distributions	No	No
Payments for entering into a restraint of trade agreement	No	No
Payments for private or domestic work under 30 hours per week	No	No
Fringe benefits	No	No
Superannuation contributions	No	No
Share acquisition under an employee share scheme	No	No

More information

If you need more information, please call your Corporate Super Business Relationship Manager or Segment Advice Specialist on 1300 785 066 (option 5).

What you need to know

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