MLC TechConnect

Guide to Superannuation Guarantee

Table of contents

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Guide to superannuation guarantee

This guide outlines the Superannuation Guarantee (SG) rules to allow you to assist employers meet their obligations and help employees know their entitlement.

What is SG?

The SG Scheme requires all employers to provide a prescribed minimum level of super support for each eligible employee and is administered by the ATO.

Employers self-assess their SG obligations. Penalties apply if SG is underpaid on behalf of employees or paid late. Employers can determine and rectify an error including payment of the penalty by contributing directly to a superannuation fund. However, the employer still needs to report a shortfall to the ATO. The ATO may also identify a shortfall and impose the penalty.

Employees should also ensure SG is being paid on their behalf. If an employee believes insufficient SG is being paid, the ATO indicates that the employee should discuss the issue with their employer, as the first step. If the employee is not satisfied with the outcome, they can direct their complaint to the ATO.

As SG contributions are employer contributions, these count towards the employee's concessional contribution (CC) cap. These contributions are taxed at up to 15% within the fund and Division 293 tax may also be payable for certain individuals.

Minimum SG obligation

The required minimum super contribution for each eligible employee is **11.5%** of ordinary time earnings (OTE) in the 2024/25 financial year. The rate increases to 12% for 2025/26 and subsequent financial years.

The ATO have **SG rates** for prior financial years. Some employers may also have superannuation obligations under:

- Commonwealth, State or Territory law
- State industrial award, or
- occupational superannuation arrangement.

Contributions under these obligations can also count towards meeting the employer's SG obligations.

Maximum contribution base

The maximum contribution base (MCB) is the maximum level of OTE that SG must be calculated and paid. An employer can pay superannuation above this maximum amount and these amounts are voluntary employer contributions.

The MCB is the lesser of the:

1. indexed MCB from the previous financial year, or
2. [CC cap / SG rate (%)] x 0.25[1] .

The second threshold applies if the indexed MCB results in the SG obligation exceeding the CC cap for that financial year. Therefore, in those financial years, SG is limited to the CC cap.

[1] Super Guarantee (Administration) Act 1992 (SGAA) s15

The MCB is indexed each year in line with average weekly ordinary time earnings. The MCB amount for 2024/25 is $65,070 per quarter. The calculation of the maximum SG obligation on the annual equivalent figure is shown in the table below.

Financial year	Calculation	Maximum SG obligation
2024/25	$65,070 x 4 x 11.5%	$29,932.20

The MCB applies on an individual employee basis. This means that an employer must ensure that the SG obligation is met for each eligible employee. An individual who has more than one employer may breach the CC cap. However, an employee in this situation can utilise the opt-out provisions (see below) to receive an employer shortfall exemption certificate.

SG opt-out

Eligible employees (not the employer) can apply to the ATO to opt-out of receiving SG to avoid breaching the CC cap. This situation generally arises for high income earners with multiple employers. The following example illustrates how an employee can exceed the CC cap due to each individual employer meeting their SG obligations.

Example 1: Breach of CC cap with multiple employers

Steve is a doctor and works at two hospitals. He works at:

- NewYou Private Hospital four days per week earning $300,000 pa ($75,000 per quarter), and
- A children's hospital one day per week earning $80,000 pa ($20,000 per quarter).

Each employer's SG obligation in 2024/25 is:

- $29,932.20 – the quarterly salary ($75,000) exceeds the MCB for 2024/25 ($65,070) and therefore SG is limited to $65,070 x 11.5% x 4 for NewYou Private hospital, and
- $9,200 for the children's hospital.

The total SG payable is $39,132.20 and results in an excess CC of $9,132.20. Steve will receive an excess CC notice.

We assume no change in the salary throughout the year. The CC cap is $30,000 for 2024/25 financial year.

The opt-out provisions overcome this issue where the employee has no control over the contributions being made. If an employee does not utilise the opt-out option, excess CCs are taxed at the individual's marginal tax rate and the ability exists to elect to have the excess refunded. Refer to **Guide to CC cap** for further information.

Advice tip

In many cases, the cost of SG is considered as part of the total employment package for an employee. Employees who can opt-out of receiving SG should negotiate to receive additional salary or other non-cash remuneration. Employees may wish to consider discussing this issue with their employer prior to lodging an application to ensure an agreement can be reached in relation to alternative remuneration.

Application to the ATO

Under the SG opt-out, an eligible employee applies to the ATO for an employer shortfall exemption certificate
(or certificates for different employers). The application must:

- be in the approved **form**
- specify the employer, the quarter(s) and financial year, and
- be made 60 days before the first day of the quarter to which the application relates.

When making a decision to issue a certificate, the ATO needs to be satisfied:

- that the person is likely to receive excess CCs (from employer contributions)
- one of the person's employers has an SG obligation, and
- it is appropriate to issue a certificate.

The ATO considers the entire circumstances as part of the assessment including:

- any other applications for certificates or a shortfall exemption certificate already issued that relates
- to either the quarter or financial year
- other relevant information such as previous tax returns to understand income, or
- previous employer contributions.

The ATO can issue a certificate for a single quarter or multiple quarters in a financial year[2] and for multiple employers. As the certificate can only relate to quarters in a financial year, an application must be made for each year (if needed).

If the ATO grants the certificate, it provides a written response to the employee and the employer nominated in the application. However, if the application is declined, only the employee is notified.

An employer shortfall exemption certificate cannot be varied or revoked once issued by the ATO. This means an employer cannot be forced to pay SG if there is a change in the employee's circumstances relating to the period the certificate covers.

However, an employee can negotiate with their employer for part or all of the SG to be paid into super for the impacted quarter if circumstances change.

Advice tip

An employee cannot apply for certificates for all employers. There is a requirement that at least one employer of that employee has an SG obligation.

A certificate can apply to up to four quarters in a financial year. Prior to the beginning of each new financial year, impacted clients may wish to apply. This application should also consider other changes that apply from 1 July, such as the indexation of the MCB and any indexation of the CC cap.

[2] TAA Sch 1 s990-5

Employer shortfall exemption certificate issued

The employer shortfall exemption certificate states:

- the employee
- the employer, and
- the quarter(s) to which the certificate relates.

This certificate only reduces that employer's SG obligation for that employee. Any other legal obligations, such as under an award, industrial agreement or employment contract, must continue to be met.

The certificate effectively states that the MCB for that employee is zero for the relevant quarter and so SG is not required to be paid to the employee for the quarter.

The certificate does not stop the employer from making other contributions to superannuation, such as voluntary employer contributions or salary sacrifice. The certificate ensures that for SG purposes there are no penalties for not making contributions for SG purposes.

The certificate may be ignored by the employer if insufficient time is provided to adjust payroll or no agreement has been reached between the employee/employer regarding alternative remuneration.

Employers and employees

The legislation states that the ordinary meaning is used for both employer and employee[3]. However, the meaning of employee is expanded to capture other individuals, such as:

- directors
- members of Parliament (State and Commonwealth)
- person employed wholly or principally for a contract of labour
- performers and sports people
- a person who is paid to complete domestic or private work for more than 30 hours per week, and
- a person working under a contract that is wholly or principally for the labour of the person (the person is an employee of the other party to the contract).

The term 'contractor' can be misleading as some contractors may be captured under the expanded definition of employee. The ATO has provided some guidance to help employers check if their worker is an **Employee or independent contractor**, which can assist in determining whether a contractor is captured under the expanded definition of employee.

In simple terms, a person engaged under a 'contract of service' is an employee and undertakes a particular job within the conditions of that employer. In contrast, a 'contract for service' is associated with engaging services for a specific outcome or result.

Court cases have raised various factors to consider when determining the arrangement, such as:

- control over the way work is completed
- if the person is carrying on a business in their own right
- the provision of tools
- is the person at risk of loss
- the intention or description of the arrangement between the parties
- the payment arrangement is based on set hours of work
- if there is an ongoing expectation to work or there is an agreement to perform specific tasks, and
- if there is any entitlement to leave payments.

[3] SGAA s12

Based on the arrangement, it is possible that an individual employed as a contractor can be treated as an employee for this purpose and SG is payable. This would include situations where an invoice is provided which quotes an Australian Business Number.

The ATO's view considers individual arrangements on their own merits and therefore the factors considered may be different. As assistance to the employer, the ATO has an provided **guidance** to work out if an individual is likely to be an employee or contractor for both tax and super purposes.

Advice tip

Sole traders and members of a partnership are not considered employees and therefore no SG obligation exists. However, if those businesses employ individuals to undertake work, SG is payable as those individuals are employees.

Clients who undertake work within their own company or trust and receive payments (such as salary, wages, directors' fees) are employees of those entities. The entity, as the employer, must pay SG.

Exempt employees

SG is not required to be paid for exempt employees even though these individuals satisfy the employee definition. Examples of exempt employees are:

- employees under age 18 working less than 30 hours per week
- non-resident employees working outside of Australia[4]
- payments made while on paid parental leave
- salary or wages paid to employees who are engaging in an eligible community service[5] activity (such as jury service, natural disaster management or voluntary emergency activity)
- foreign executives holding certain visas or entry permits[6], and
- salary or wages paid to non-resident employees for work done outside Australia, except in cases where the employee is covered by an international social security agreement[7].

In relation to the last exemption, for employees covered by scheduled international social security agreements to avoid double superannuation coverage, the employer can apply to the ATO for a **Certificate of Coverage** to ensure that the exemption applies in the foreign country. The employer must continue to make SG contributions in Australia. This can occur where an employee is sent to work temporarily in another country and the employer must make superannuation contributions for the employee under the legislation of both countries.

Income for SG purposes

The minimum SG obligation is calculated on an employee's ordinary times earnings (OTE) limited to the MCB. If an employer fails to meet their obligations, salary and wages are used which has a broader meaning compared to OTE. However, payments that form part of OTE always form part of salary or wages.

[4] Exceptions may apply. For example, an Australian company sends an employee temporarily to an overseas office.
[5] Fair Work Act 2009 s109(1)
[6] As prescribed by the Super Guarantee (Administration) Regulations 2018 (SGAR) s11 and s26(1).
[7] SGAA s15C

Appendix A provides some examples of income and whether it falls under OTE or salary and wages. SGR 2009/2 provides a more comprehensive list. Amounts salary sacrificed to superannuation are included in OTE as well as salary and wages. The ATO has a checklist to help identify common payments that are considered salary or wages and whether the amounts are considered a part of OTE for SG purposes.

Ordinary time earnings

OTE[8] is defined as the lower of:

- earnings in respect of ordinary hours of work consisting of over-award payments, commissions and shift loadings, or
- the maximum contribution base for the quarter.

An employee's 'ordinary hours of work' are the work hours determined by the applicable award or agreement that governs the employee's employment conditions. It may also be determined by the employee's employment contract. If no ordinary hours of work are stated, the ordinary hours of work are the regular or normal number of hours that the employee works each day.

The ATO's view on OTE is also outlined in SG Ruling SGR 2009/2. The ruling explains that OTE includes and excludes certain payments such as those summarised in the table below.

Included in OTE:	Excluded from OTE:
Overtime where ordinary hours are not stated in award or agreement, or not separated from other hours	Overtime payment, above the ordinary hours stated in award or agreement
Shift-loading	On call allowances, or expense allowance expected to be used in full
Commission	Reimbursement of expenses
Allowances and loadings	Workers' compensation payments if not working or employment has terminated
Bonuses	Fringe benefits and other non-cash payments
Paid leave and holiday pay	Redundancy payments
Payments in lieu of notice	Payments for unfair dismissal
Workers' compensation payments for hours worked	
Salary sacrifice amounts to superannuation	
Director's fees	

Advice tip

Salary sacrifice/packaged amounts (excluding amounts to superannuation) reduce OTE and may reduce the amount of SG payable on OTE. Before entering into an agreement to salary sacrifice, employees should ensure their salary sacrifice agreement states that SG obligations should not reduce due to the amounts directed to superannuation. If entitlements are reduced

[8] SGAA s6(1)

by the arrangement, consideration should be given to personal deductible contributions.

Salary and wages

Salary and wages are used to calculate the SG shortfall for SG charge purposes. Salary and wages captures a broader range of income compared to OTE. Salary and wages includes:

- OTE
- commissions
- bonuses
- salary sacrifice amounts to superannuation
- payment for the performance of duties as a member of the executive body (whether described as the board of directors or not) of a body corporate
- payments under a contract[9] that are made in respect of the labour of the person working under the contract
- workers' compensation for hours worked (excludes workers' compensation if no work is undertaken)
- remuneration of a member of the Parliament of the Commonwealth or a State or the Legislative Assembly of a Territory
- 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 creative talents
- 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
- remuneration of a person who holds, or performs the duties of an appointment, office or position under the Constitution or a law of the Commonwealth, a State or a Territory (including members of the defence force or a police force), and
- remuneration of a member of a local Government council.

However, salary or wages specifically excludes:

- remuneration under a contract of employment to a person who is employed for not more than 30 hours a week for work of a domestic or private nature, and
- fringe benefits for the purposes of the Fringe Benefits Tax Assessment Act 1986.

Meeting the obligations

To meet the SG requirements, an employer must:

- have 'made' the contribution to superannuation
- ensure the contribution is made to a complying superannuation fund, and
- make the contribution by the due date.

If the employer fails any of these requirements, the obligation has not been met and the employer must pay the SG charge. However, if an employee dies, the employer can pay the amount that would otherwise have been directed to superannuation to the legal personal representative[10]. In this case, the employer has met the SG obligation for that employee even though the amount was not paid to a complying superannuation fund.

Employers need to maintain appropriate records to demonstrate the obligations have been met.

[9] SGAA s12(3)
[10] SGAA s23(9A)

When is a contribution made?

A contribution is 'made' when it is received by the superannuation fund. The ATO provides guidance and examples in Taxation Ruling **TR 2010/1**, including those summarised in the table below.

Method of payments	Contribution is made when:
Cash	Received by the fund
Electronic transfer (including BPAY)	Credited to the fund's account
Cheque	Received by the fund (if cheque is dishonoured, the contribution was never made)

If an approved clearing house is used by an employer, contributions are 'made' for SG purposes when received by an approved clearing house[11]. The only approved clearing house is the ATO's Small Business Superannuation Clearing House[12]. A business can use this free service if it has 19 or less employees or an aggregated turnover of less than $10 million.

Contributions to non-approved clearing houses are made when received by the super fund. Employers should allow adequate time to ensure the clearing house directs the contributions to the superannuation fund by the required date. As the contribution is only made for SG purposes when received by the super fund, this could mean late SG payments. The non-approved clearing house may impose cut-off dates to ensure SG obligations are satisfied.

Timing of the contribution is important for employers as this determines in which financial year a tax deduction can be claimed (if eligible). For all contributions, the year in which the tax deduction is available is when the contribution is made to the superannuation fund (as outlined in **TR 2010/1**).

Complying superannuation fund

Contributions must be made to a complying superannuation fund. If contributions are made to a non-complying superannuation fund, the employer has not met the SG obligations. An exemption applies if the contribution has been made to the fund and the employer has obtained a written statement that the fund is complying. This allows the employer to meet the obligation if the fund subsequently becomes non-complying.

Due date for SG contributions

SG contributions are due quarterly on the following dates.

Quarter	Due date for SG contributions
1 July to 30 September	28 October
1 October to 31 December	28 January
1 January to 31 March	28 April
1 April to 30 June	28 July

[11] SGAA s23B
[12] SGAR s24

If the due date falls on a weekend or public holiday, the amount is payable by the next business day. Employers can make SG payments more regularly than quarterly provided the total SG obligation for the quarter is paid by the due date. An employer can pay SG in advance but this cannot be more than 12 months before the beginning of the quarter[13].

Note: The Government has proposed changes from 1 July 2026 that require employers to pay SG for employees at the same time as their salary and wages, along with other changes such as the application of the SG charge. At the time of writing, this proposal is not yet law. For more information, refer to the ATO's **Payday Superannuation** page.

SuperStream

Employers must pay superannuation contributions and send information electronically to ensure the SuperStream requirements are met. SuperStream is designed for consistent information across employers, superannuation funds, service providers and the ATO. It also facilitates that superannuation payments can be made via a single amount even if it is in relation to many employees and paid to multiple superannuation funds.

Advice tip

An exception from using SuperStream applies if a person is a director or employee of their own company and superannuation payments are directed to that person's self-managed superannuation fund. However, if superannuation payments are made to another superannuation fund, the SuperStream requirements must be met.

SG charge

An employer who fails to meet the SG obligations is subject to SG shortfall on which SG charge (SGC) is imposed. The employer's SG shortfall for a quarter is the sum of the:

- total of the employer's individual SG shortfalls for the quarter for all employees
- employer's nominal interest component for the quarter, and
- administration fee component of $20 per employee for the quarter.

The nominal interest rate is designed to compensate the employee for the time the funds were not invested in their superannuation fund and is calculated from the beginning of the quarter that the payment relates. The nominal annual interest rate from which the daily effective rate is calculated is derived from the monthly average yield of 90-day Bank Accepted Bills plus 7 percentage points.

The SG charge is determined by the employer on a self-assessment basis. The ATO has an **online tool** to assist employers. An employer who has a liability for the SG charge needs to pay the amount and submit the SG charge statement to the ATO by the following dates.

Quarter ending	Due date for SG charge
1 July to 30 September	28 November
1 October to 31 December	28 February
1 January to 31 March	28 May
1 April to 30 June	28 August

[13] SGAA s23(7)

An employer who has made a late payment to superannuation can use this amount to reduce the SG charge. This is referred to as the late payment offset. The late payment offset reduces the SG shortfall and nominal interest rate only. The late payment is not tax deductible to the employer.

If the SG charge remains unpaid after the due date, the employer must pay the General Interest Charge (GIC) on the unpaid amount. The GIC is imposed on the unpaid amount of the SG charge for the quarter (excluding the nominal interest and administration components) from the original payment due date.

The GIC for a day is worked out by dividing the nominal annual interest rate by the number of days in the calendar year. The period for which GIC is payable starts at the beginning of the day the particular amount is due to be paid and ends on the last day on which the amount or GIC on that amount remains unpaid.

An employer may also be liable for an additional SG charge, which is at least 100% of the SGC.

Deductibility of SG contributions

SG contributions are tax deductible to the employer in the year the contribution is made[14]. This includes amount payable to previous employees if certain conditions are met, including making the payment within four months of the person ceasing work with that employer[15]. However, if an employer is liable to pay the SG charge, no tax deduction can be claimed[16]. This includes for the SG payments, nominal interest rate, GIC and administration fee.

Employee options if SG unpaid

An employee who is concerned that no or insufficient SG payments are made on their behalf should initially check contributions into their superannuation fund or their myGov account. If there are still concerns, the employee should approach their employer to query the calculation and payments of SG.

The final option is for the employee to contact the ATO to report unpaid SG using the **online tool**. The tool allows an employee to report unpaid or late amounts, as well as if contributions are made to the wrong fund.

Choice of fund rules

The choice rules require employers to offer eligible employees a choice as to which fund receives their SG contributions. For guidance about who is eligible for choice and how employers can satisfy their obligations, refer to **ATO guidance**.

Stapled fund

Stapling allows an individual to change employment and have the new employer contributions directed to an existing super fund. Employers must request information from the ATO regarding an employee’s stapled fund unless the employee has exercised choice of fund.

The request is lodged through the **ATO online services**. The ATO uses the information on that person’s superannuation accounts to provide details to the employer. Where an employee has multiple super accounts, the ATO considers the following aspects to determine the stapled fund:

- if an account has previously been identified as a stapled fund
- how recently contributions have been made to the fund
- the account balance of each interest, and
- how recently the accounts were created.

[14] Income Tax Assessment Act 1997 (ITAA97) s290-60
[15] ITAA97 s290-85
[16] ITAA97 s290-95

If a stapled fund is identified, an employer must direct super contributions to that fund including SG and salary sacrifice. If the ATO provides fund information to an employer and that fund does not accept contributions (eg certain defined benefit funds), the employer must notify the ATO which will advise of another fund.

If no other fund is available, the employee needs to exercise choice or the employer uses its default fund. Employers still need to offer eligible employees ‘choice of fund’ and direct contributions to that nominated fund if choice is exercised.

Advice tip

Employers need to have a default fund for employees who do not have an existing ‘stapled’ fund and have not exercised choice of fund. For example, this may be the employee’s first job that provides SG.

Appendix A: OTE vs salary and wages

SGR 2009/2 provides guidance on the ATO's view on OTE and salary/wages. Below are some examples of income and classification under OTE or salary and wages from this ruling.

Payment	Captured under	
	OTE	**Salary and wages**
Overtime hours over and above ordinary hours stated in award or agreement	No	Yes
Overtime where ordinary hours are not stated in award or agreement, or not separated from other hours	Yes	Yes
Casual employee – shift loading	Yes	Yes
Casual employee – overtime payments	No	Yes
Allowances (unconditional extra payment)	Yes	Yes
Workers' compensation – returned to work	Yes	Yes
Workers' compensation – not working	No	No
Leave (annual, long service, sick) paid during employment	Yes	Yes
Termination payments – unused leave (annual, long service, sick)	No	Yes
Termination payments – in lieu of notice	Yes	Yes
Bonus (performance, Christmas or other bonus in respect of ordinary hours of work)	Yes	Yes
Bonus relating to overtime only	No	Yes
Salary sacrifice amounts to superannuation	Yes	Yes