

Understanding Changes to the Employer Super Guarantee Rate

Business owners need to be alert to the superannuation changes. The superannuation guarantee (SG) paid by employers for an eligible employee is to rise from 9.5% to 10% - commencing from 1 July this year.

There will be increases of 0.5% each year until the SG percentage reaches 12% from 1 July 2025, as follows: -

- **Current SG Rate: 9.5% ending 30 June 2021**
- From 1 July 2021 – 30 June 2022: **10%**
- From 1 July 2022 – 30 June 2023: **10.5%**
- From 1 July 2023 – 30 June 2024: **11%**
- From 1 July 2024 – 30 June 2025: **11.5%**
- From 1 July 2025: **12%**

For Employees

The mandated SG percentage increase does not necessarily mean employees will get a windfall in overall pay from 1 July, as it is dependent on the terms of their employment contract and relevant awards.

It may be that there is a reduction in an employee's take-home pay, come 1 July to adjust for the 0.5% increase in the super guarantee, where SG is included in the employee's remuneration (SG inclusive) package agreement.

The increase in the SG rate to 10 per cent from 1 July 2021 also means that the SG opt-out income threshold will increase to \$275,000 from 1 July 2021 (up from \$263,157). High-income earners with multiple employers can opt-out of the SG regime in respect of an employer to avoid unintentionally breaching the concessional contributions cap (\$27,500 from 2021-22).

For Employers

SG contributions are calculated and required to be paid at least quarterly by **employers, based on the SG percentage times ordinary time earnings (OTE)**.

OTE is the amount an employer pays employees for their ordinary hours of work pre-tax, including things like commissions and shift loadings, but does not include overtime payments. For example, if an employee's OTE is \$100,000 for the 2021–22 tax year, the employer is required to pay \$10,000 into their super fund (10 per cent of \$100,000).

The Superannuation Guarantee \$450 per month eligibility threshold will be removed from 1 July 2022. As a result, employers will be required to make quarterly Super Guarantee contributions on behalf of such low-income employees earning less than \$450 per month (*unless another Super Guarantee exemption applies*).

What about Contractors?

It is important to note that some contractors are entitled to SG contributions, even if they have an Australian Business Number (ABN), as shown recently in decisions handed down in *Franco v Deliveroo Australia Pty Ltd* [2021] FWC 2818 [Fair Work Commission U2020/7066] and *Olias Pty Ltd as trustee for the Storer Family Trust and Commissioner of Taxation* [2021] AATA 1524.

In the *Deliveroo Case*, the Fair Work Commission (FWC) ruled Deliveroo was an employer of its delivery riders as it had significant actual – or potential – control over how work was performed, when work was done, and which delivery rider received that work. This indicated Deliveroo's business platform acted like an employer. The FWC also ruled the delivery rider was not carrying on a trade or business of his own, or on his own behalf. Instead, he was working in Deliveroo's business as part of that business and was entitled to employee wages and leave entitlements, and therefore SG.

Similarly, in the *Storer Case*, the Tribunal found that a music teacher employed under contract was, in fact, an employee and not an independent contractor.

According to the Australian Taxation Office (ATO), if an employer pays contractors mainly for their labour, they are employees for SG purposes and as their employer you may need to pay SG for them provided they are paid:-

- (a) **under a verbal or written contract that is mainly for their labour** (more than half the dollar value of the contract is for their labour)
- (b) **for their personal labour and skills**; as such, payment is not dependent on achieving a specified result
- (c) **to perform the contract work personally** (and not delegated to someone else).

What about Temporary Residents?

Temporary residents (those on temporary entry visas), including backpackers, are also entitled to SG contributions from employers.

Tools to Assist Employers

The ATO has an online tool to help employers determine whether workers are eligible for SG contributions. It also has an **OTE checklist** that calculates what employee cost is ordinary times earnings and which is not. Employers can determine employee SG contributions using the **SG contributions calculator**.

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