

Superannuation guarantee

How to meet your super obligations



The super guarantee system affects most employers in Australia so it is important you understand your obligations.



Your tax or financial adviser can also help you meet your obligations.



For more information about your super obligations:

- visit our website at www.ato.gov.au or
- phone **13 10 20**.



OUR COMMITMENT TO YOU

We are committed to providing you with advice and information you can rely on.

We make every effort to ensure that our advice and information is correct. If you follow advice in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it. However, we will not charge you a penalty or interest if you acted reasonably and in good faith.

If you make an honest mistake when you try to follow our advice and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest.

If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

You are protected under GST law if you have acted on any GST advice in this publication. If you have relied on GST advice in this publication and that advice later changes, you will not have to pay any extra GST for the period up to the date of the change. Similarly, you will not have to pay any penalty or interest.

If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser.

The information in this publication is current at April 2008.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at www.ato.gov.au or contact us.

© COMMONWEALTH OF AUSTRALIA 2008

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>



PUBLISHED BY


Australian Taxation Office
Canberra
April 2008
JS 9631

ABOUT THIS GUIDE


This guide explains what you need to know to meet your super obligations as an employer and business operator.

A good place to start is the quick super guide for your business on page 2. It outlines your super obligations as an employer and which sections you need to read to get more detailed information about each of your obligations.

Throughout this guide you will find important notes (look for the  and  symbols) that will help you with key information.

You will also find 'more information' boxes (look for the  symbol) that will show any further steps you may need to take or supplementary information we recommend you refer to.

Throughout this guide we often refer to NAT numbers. A NAT number is a unique national identifying number we give each of our publications to keep track of them. You can use this number to search for publications on our website and quote the number over the phone when requesting a publication to be sent to you.

 When we refer to you or your business in this guide, we're referring to you as a business entity, for example: a sole trader, partnership, company or trust that conducts a business.

CHANGES AT A GLANCE

The following changes to super affect you, as an employer.

CHANGES FROM 1 JULY 2008

- Ordinary time earnings as defined in the super guarantee law are the basis for calculating **super contributions** for all employees (see 'Ordinary time earnings' pay on page 9).
- Your employer nominated super fund must offer minimum levels of life insurance death cover to members (see 'Insurance requirements' on page 16).
- You will generally be able to offset super guarantee contributions that are paid late to a super fund (see 'If you pay a super contribution after the cut-off date' on page 21).

CHANGES SINCE 1 JULY 2007

- When an employee gives you a *Tax file number declaration* (NAT 3092) form, you must pass their tax file number (TFN) on to their super fund. A revised *Tax file number declaration* form is now available. You must order the new form and destroy old stock (see 'Tax file numbers' on page 17).
- You can claim a full tax deduction for all contributions you make to super funds on behalf of your employees, provided certain conditions are met (see 'Claiming a tax deduction' on page 12).
- If you are self-employed, you can claim a full deduction for personal super contributions you make, provided certain conditions are met (see 'Super for the self-employed' on page 5).
- If you are self-employed you may be eligible for super co-contributions (see 'Super for the self-employed' on page 5).

CONTENTS

ABOUT THIS GUIDE

CHANGES AT A GLANCE

A QUICK SUPER GUIDE FOR YOUR BUSINESS

01

GETTING STARTED

The super guarantee system

Working out if you are an employer for super guarantee purposes

Employee eligibility

Super for the self-employed

Super for your temporary resident employees

Super for contractors

Tools to help you get started

02

YOUR SUPER OBLIGATIONS

Super obligations based on your business structure

When to pay super contributions

Payment of member super contributions

How much super to pay

Claiming a tax deduction

Where to pay super contributions

Offering your employees a choice of super fund

Tax file numbers

Keeping proper records

i

i

2

4

4

4

4

5

5

6

7

8

8

8

9

9

12

12

14

17

18

03

WHAT TO DO IF YOU HAVEN'T MET YOUR SUPER OBLIGATIONS

20

The super guarantee charge

20

The super guarantee charge and other penalties

22

04

PAYING SUPER UNDER SPECIAL CIRCUMSTANCES

24

Salary sacrificing super

24

Super on back-paid salary or wages

29

Employees working overseas

29

MORE INFORMATION

inside back cover

A QUICK SUPER GUIDE FOR YOUR BUSINESS

Are you an employer for super purposes?	<p>You're an employer if you employ a person under a verbal or written employment contract on a:</p> <ul style="list-style-type: none"> ■ full-time ■ part-time, or ■ casual basis. <p>You may also be considered an employer for super purposes if you make payments to a person under a contract for labour.</p>	See page 4															
Do you have to pay super for your employees?	<p>Generally, you have to pay super for your employees if they:</p> <ul style="list-style-type: none"> ■ are between 18 and 69 years of age ■ are paid \$450 (before tax) or more in a calendar month, and ■ work full-time, part-time or on a casual basis. 	See page 4															
Are you self-employed?	<p>If you are self-employed, you don't have to make super contributions to a super fund for yourself. However, you may wish to consider super as a way of saving for your retirement. Most self-employed people can claim a full deduction for contributions they make to their super until age 75.</p>	See page 5															
Do you have to pay super for contractors?	<p>If you pay your contractors under a contract that is wholly or principally for labour, you have to make super contributions for them, even if they quote an Australian business number (ABN).</p>	See page 6															
When do you pay super contributions?	<table border="1" data-bbox="357 1117 1107 1317"> <thead> <tr> <th>Quarter</th> <th>Period</th> <th>Payment cut-off date</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>1 July – 30 September</td> <td>28 October</td> </tr> <tr> <td>2</td> <td>1 October – 31 December</td> <td>28 January</td> </tr> <tr> <td>3</td> <td>1 January – 31 March</td> <td>28 April</td> </tr> <tr> <td>4</td> <td>1 April – 30 June</td> <td>28 July</td> </tr> </tbody> </table> <p>When a cut-off date for payment falls on a Saturday, Sunday or public holiday, you can make your payment on the next working day after the cut-off date.</p>	Quarter	Period	Payment cut-off date	1	1 July – 30 September	28 October	2	1 October – 31 December	28 January	3	1 January – 31 March	28 April	4	1 April – 30 June	28 July	See page 8
Quarter	Period	Payment cut-off date															
1	1 July – 30 September	28 October															
2	1 October – 31 December	28 January															
3	1 January – 31 March	28 April															
4	1 April – 30 June	28 July															
How much super do you pay?	<p>You must pay a minimum of 9% of each employee's earnings base. For most employees, their earnings base is their ordinary time earnings. This usually means the amount they earn for their ordinary hours of work.</p>	See page 9															
Can you claim a tax deduction?	<p>Generally, super contributions are tax deductible in the financial year you pay them. You cannot claim a tax deduction for the super guarantee charge. This is the penalty imposed if you fail to meet your super obligations.</p>	See page 12															
Where do you pay super contributions?	<p>You must pay contributions into a complying super fund or retirement savings account. Your employees may be able to choose the super fund you pay their super contributions into.</p>	See page 12															
Do you need to offer your employees a choice of super fund?	<p>You must provide a <i>Standard choice form</i> (NAT 13080) to new employees who are eligible to choose a super fund within 28 days of the day they start working for you. Once an employee chooses a super fund, you have two months to arrange to pay contributions into that fund.</p>	See page 14															
What records must you keep?	<p>You must keep records that show:</p> <ul style="list-style-type: none"> ■ the amount of super you paid for each employee ■ how you calculated the level of super you paid, and ■ that you have offered your eligible employees a choice of super fund. 	See page 18															

What if you don't meet your super obligations?

If you don't meet your super obligations, you will incur a super guarantee charge. You must pay this charge to us if you don't pay:

See page 20

- enough super contributions (at least 9%) for each eligible employee
- super contributions by the cut-off date for payment, or
- super to each employees' chosen super fund.


If you don't meet your obligations, you will have to lodge a *Superannuation guarantee charge statement – quarterly* (NAT 9599) with us by the due dates listed below. You cannot claim a tax deduction for the super guarantee charge.

Super contributions payment quarter	Due dates for lodging the <i>Superannuation guarantee charge statement – quarterly</i> with us
1 (1 July – 30 September)	28 November
2 (1 October – 31 December)	28 February
3 (1 January – 31 March)	28 May
4 (1 April – 30 June)	28 August

What tools and resources can you use?

Web based decision tools and calculators:

- **Employee/contractor decision tool.** This helps you work out whether your new or existing workers are contractors or employees for tax and super.
- **Superannuation guarantee eligibility decision tool.** This helps you work out if you must make super contributions for your workers.
- **Superannuation guarantee contributions calculator.** This calculates how much super you must contribute for your eligible workers.

 To use our web-based decision tools and calculators, visit our website at www.ato.gov.au and select 'For Businesses' – 'Employer essentials' – 'Tax rates, calculators & tools' – 'Other calculators & tools'.

Super publications:

- *Super – what employers need to know* (NAT 71038)
- *Super is changing* (NAT 70705)
- *Completing the superannuation guarantee charge statement – quarterly* (NAT 9600), and
- *Superannuation guarantee charge statement quarterly* (NAT 9599).

THE SUPER GUARANTEE SYSTEM

On 1 July 1992, the super guarantee system was introduced. It affects most employers in Australia so it is important you understand your obligations.

Under the super guarantee law, you must pay super contributions (in addition to salary and wages) into a complying super fund or retirement savings account so your employees can enjoy the benefits of super in their retirement.

You may also have to offer your eligible employees a choice of super fund.

WORKING OUT IF YOU ARE AN EMPLOYER FOR SUPER GUARANTEE PURPOSES

You are an employer for super guarantee purposes if you employ a person under a verbal or written employment contract on a:

- full-time
- part-time, or
- casual basis.

You may also be considered an employer if you:

- make payments to a person for labour under a contract, even if the person quotes an ABN
- are responsible for paying salary or wages, or
- have the power to hire or dismiss workers.

You are also considered an employer and have to pay super for your eligible employees if you are a:

- non-resident employer who has employees working in Australia
- government organisation, statutory authority or municipal body
- tax exempt organisation, or
- family company or trust paying salary or wages to family members (including yourself) who work in the business.

EMPLOYEE ELIGIBILITY

For super guarantee purposes, an employee is generally an individual who receives payment in the form of salary or wages in return for their labour or services. Eligible employees are workers who are entitled to be paid super contributions by their employer.

Generally, you have to pay super for any employee who:

- is between 18 and 69 years of age
- you pay \$450 or more (before tax) in a calendar month, and
- works full-time, part-time or on a casual basis.

You also have to pay super for any employee who:

- is under 18 years of age
- you pay \$450 or more (before tax) in a calendar month, and
- works full-time, part-time or on a casual basis 30 hours or more in a week.

The super guarantee also applies to the following:

- Employees who receive a super pension or annuity while still working. This includes employees who qualify through the transition to retirement measure. Transition to retirement allows people to access their super benefits once they reach their preservation age without having to retire or leave their job.
- Directors of a business. Generally, this means that directors who receive salary or wages, or directors' fees are entitled to super contributions from their employer. Your family members working in the business may also be eligible employees.

Who is not eligible for super?

You do not have to pay super contributions for the following employees:

- Employees you pay less than \$450 (before tax) in a calendar month. You must still pay super contributions for any month that you pay your employee \$450 or more.
- Employees under 18 years old working not more than 30 hours per week.
- Employees 70 years of age and older.
- Non-resident employees you pay for work done outside Australia.
- If you are a non-resident employer, resident employees for work they do outside Australia.
- Some foreign executives who hold certain visas or entry permits under the migration regulations (for more information, phone **13 10 20**).
- Employees you pay to do work of a domestic or private nature for no more than 30 hours a week. For example, a part-time nanny or housekeeper.
- Employees who receive payments under the Community Development Employment Program.
- Members of the army, navy or air force reserve (the armed forces do not have to pay super contributions for reserve members).
- Employees who made a choice, prior to the abolition of reasonable benefit limits to not receive employer super contributions because their accumulated super benefits exceeded the pension reasonable benefit limit.
- Employees temporarily working in Australia who are covered by a bilateral super agreement (you must keep a copy of the employee's certificate of coverage to verify the exemption).

SUPER FOR THE SELF-EMPLOYED

If you are a self-employed business person, you don't have to make super contributions to a super fund for yourself. However, you may want to consider super as a way of saving for your retirement.

! Most self-employed people can claim a full deduction for contributions they make to their super until age 75. When considering making a contribution to your super keep in mind that contributions you make may be subject to extra tax if they exceed the contributions limit for that year.

You may also be eligible for the super co-contribution payment. The super co-contribution helps eligible low to middle income earners save for their retirement. If you are eligible and you make personal super contributions, the government will match your contribution with a co-contribution up to certain limits.

To be eligible for a super co-contribution, you must:

- make a personal super contribution by 30 June of that income year to a complying super fund or retirement savings account
- not claim a deduction in your income tax return for the contributions you make
- earn a total income that is below the income threshold (\$58,980 in the 2007–08 financial year)
- earn 10% or more of your total income from running a business, eligible employment or a combination of both
- lodge an income tax return for the year of income
- be less than 71 years old at the end of the income year, and
- not hold an eligible temporary resident visa at any time during the income year.

➤ For more information about the super co-contribution, visit our website at www.ato.gov.au and select 'For Individuals' – 'Super essentials' – 'Growing your super'.

You must also make sure your super fund has your TFN, otherwise your:

- super contributions will be taxed an additional 31.5%, and
- fund won't be able to accept personal contributions from you, which means you may miss out on any super co-contribution you are eligible for.

➤ If you are not sure of your business structure, see 'Super obligations based on your business structure' on page 8.

SUPER FOR YOUR TEMPORARY RESIDENT EMPLOYEES

If you employ temporary Australian residents who are eligible for the super guarantee, you must make super contributions for them.

When your temporary resident employees leave Australia, they can claim the payments you made into their super fund or retirement savings account. This payment is called the departing Australia superannuation payment (DASP).

Temporary resident employees can only claim their super if:

- they worked in Australia while visiting on an eligible temporary resident visa
- they have left Australia, and
- their visa has expired or been cancelled.

! On 15 October 2007, the government announced changes to the administration of super entitlements for temporary residents. The changes have not yet been legislated.

SUPER FOR CONTRACTORS

If you pay individuals under a contract that is wholly or principally for their labour, you have to make super contributions for them, even if they quote their ABN. These people are considered your employees for super guarantee purposes.


An individual's labour may include:

- physical labour
- mental effort, or
- artistic effort.

A contract for labour can be made either verbally or in writing.

A contract may be considered wholly or principally for labour, if the individual:

- is paid wholly or principally for their personal labour and skills
- must perform the contract work personally, and
- is paid for hours worked rather than to achieve a result.


 If you make a contract with someone other than the person who will actually be providing the labour, there is no employer-employee relationship.

A contract is not for the labour of the individuals if you make a contract with a company, trust or a partnership.

EXAMPLE

Harry's hobby shop makes a contract with Pete's paints to paint their new shop. The entire job is completed by one painter from Pete's paints. This painter is not an employee of Harry's hobby shop for super guarantee purposes. The contract is between Harry's hobby shop and Pete's paints.

Harry's hobby shop has no control over which particular individual/s does the work. Pete's paints may have super guarantee obligations for the painter.


 To help you determine if your contractor is an employee for super purposes, refer to Superannuation Guarantee Ruling SGR 2005/1 'Superannuation guarantee: Who is an employee?'.
To obtain a copy:


- visit our website at www.ato.gov.au and select 'Rulings, policies & law' – 'Legal Database homepage' and search for 'SGR 2005/1', or
- phone us on **13 10 20**.


Paying super to contractors

When you pay super for your contractors, (9% of your contractor's earnings base) you must base your payment calculations on the labour component of the contract only.

If the values of the various parts of the contract are not detailed in the contract, we will accept their market values and will take normal industry practices into consideration. If you cannot work out the labour portion of the contract, base your super contributions on the total value of the contract.

 Remember, paying an additional 9% wages on top of your contractor's usual pay does not count as a super contribution. To ensure you are meeting any super obligations for your contractor employees, you should pay at least the minimum 9% super contribution to their super fund account, each quarter.

 To work out how much super you must pay for each eligible employee, use our online Super guarantee contributions calculator. To access visit our website at www.ato.gov.au and select 'Rates calculators & tools' – 'For Businesses' – 'Superannuation'.

 Australian Workplace Agreements (AWAs) are employment agreements between employers and employees. This means you have super guarantee and pay as you go (PAYG) withholding obligations for anyone you employ under an AWA.

TOOLS TO HELP YOU GET STARTED

We have three web-based tools to help you understand and meet your tax and super obligations.

■ **Employee/contractor decision tool.**

This helps you work out whether your new or existing workers are contractors or employees for tax and super.

■ **Superannuation guarantee eligibility decision tool.**


This helps you work out if you must make super contributions for your workers.

■ **Superannuation guarantee contributions calculator.**

This works out how much super you must contribute for your eligible workers.

Each tool takes less than 15 minutes to use and guides you through a series of questions. You will receive an online report at the end of each session.

If you are not sure whether your workers are employees or contractors, use the employee/contractor decision tool first, before using the web-based super tools.

 To use our web-based calculators and decision tools, visit our website at www.ato.gov.au and select 'For Business' – 'Employer essentials' – 'Tax rates, calculators & tools' – 'Other calculators & tools'.

CHECKLIST

Use the following checklist to be sure you're aware of everything you need to know about super guarantee basics.

- Are you an employer for super guarantee purposes? (See page 4)
- Are your employees and contractors eligible for super? (See pages 4 and 6)
- If you are a self-employed business person are you eligible for the super co-contribution? (See page 5)
- Do you have any temporary resident employees who may be eligible for the departing Australia superannuation payment (DASP)? (See page 5)
- Do you know how to access our web-based calculators and decision tools? (See this page)

SUPER OBLIGATIONS BASED ON YOUR BUSINESS STRUCTURE

The following table summarises your super obligations to yourself, employees and contractors, depending on your business structure.

Yourself

Sole trader or partnership

If you operate your business as a sole trader or partnership, you are not an employee and the super guarantee rules don't apply to you.

Instead, like any self-employed person, you can claim a tax deduction for personal contributions you make to a super fund (limits apply). Check our website at www.ato.gov.au for current limits.

We recommend you seek professional advice when considering your own super.

Company or trust

If your business operates as a company or a trust, you are likely to be a director or an employee. In this case, the super guarantee minimum rules apply to you in the same way that they apply to your employees.

➔ For more information about super and the self-employed, see page 5.

Employees

Sole trader, partnership, company or trust

Regardless of your business structure, you must contribute 9% of an eligible employee's earnings base to a complying super fund or retirement savings account every quarter. You may also have to allow your eligible employees to choose which super fund they want to use.

⚠ You must pass on your employee's TFN (provided in their *Tax file number declaration* form) to their super fund.

Contractors

Sole trader, partnership, company or trust

You must make super contributions for an individual if they:

- are paid wholly or principally for their personal labour and skills
- must perform the contract work personally, and
- are paid for hours worked rather than to achieve a result.

WHEN TO PAY SUPER CONTRIBUTIONS

You have to pay super for eligible employees from the **first day** you employ them. These super contributions have to be paid for each eligible employee to the correct super fund at least four times a year, by the quarterly cut-off dates shown in the following table.

Quarter	Period	Payment cut-off date
1	1 July – 30 September	28 October
2	1 October – 31 December	28 January
3	1 January – 31 March	28 April
4	1 April – 30 June	28 July

When a cut-off date for payment falls on a Saturday, Sunday or public holiday, you can make the payment on the next working day after the cut-off date.

⚠ You can pay contributions more regularly than quarterly if you want to. For example, you can pay fortnightly or monthly, as long as the total super obligation for the quarter is paid by the quarterly cut-off date.

As award or other contractual super obligations may also apply, you must check that you meet requirements set out in any relevant award or contract. Compliance with one arrangement may not always ensure compliance with the other.

⊖ If you pay any super contributions directly to a fund after the cut-off date, you have not met your super obligations and will have to lodge a *Superannuation guarantee charge statement – quarterly* (NAT 9599) and pay the super guarantee charge to us. (See 'What to do if you haven't met your super obligations' on page 20.)


PAYMENT OF MEMBER SUPER CONTRIBUTIONS

If you enter into an arrangement with your employee to make post-tax super contributions on their behalf, make sure these contributions are paid to the super fund promptly in accordance with the terms of their employment and any legal requirement (that is, industrial award conditions).

Clearing houses

If you pay a super contribution through a clearing house, it is counted as being paid on the date the super fund receives it, not the date the clearing house receives it.

If the clearing house is late in transferring the payment to the super fund, you will incur the super guarantee charge and will need to complete a *Superannuation guarantee charge statement – quarterly* (NAT 9599) and pay the super guarantee charge to us (see ‘What to do if you haven’t met your super obligations’ on page 20).

 Check with your clearing house to make sure you allow enough time for them to process your super guarantee payments before the quarterly cut-off dates.


HOW MUCH SUPER TO PAY

Ordinary time earnings

You must pay a minimum of 9% of your employee’s earnings base. For most employees, their earnings base is their ordinary time earnings. This generally means the amount they earn for their ordinary hours of work, including:

- over-award payments
- commissions
- allowances, and
- paid leave.

Ordinary time earnings does not include overtime that is paid for work performed outside of ordinary hours.


 For more information about what is included or excluded from ordinary time earnings, see ‘Checklist for salary or wages and ordinary time earnings’ on page 10.

Other earnings bases

From 1 July 2008, you must use ordinary time earnings (as defined in the super guarantee law) to work out super contributions for your employees. If you use an earnings base other than ordinary time earnings to work out your super contributions and the amount you pay is less than the minimum 9%, you will have to increase this amount to meet the minimum. By doing this, you will avoid the super guarantee charge.

Earnings bases other than ordinary time earnings may be included in:

- industrial awards
- an existing agreement between you and your employee
- a fund’s trust deed, or
- a law of the Commonwealth, states or territories.

 We recommend you make sure that you have the correct systems in place to handle this change in requirements and to plan for any additional costs.

CHECKLIST FOR SALARY OR WAGES AND ORDINARY TIME EARNINGS FOR SUPER PURPOSES

Payment type	Salary or wages	Ordinary time earnings
Expense allowance you pay with the expectation that it will be fully expended in producing income, for example, car allowance paid to real estate agents	<input type="checkbox"/> No	<input type="checkbox"/> No
Allowances you pay (other than a reimbursement of expenses or expense allowance)	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Expenses you reimburse (for example travel costs)	<input type="checkbox"/> No	<input type="checkbox"/> No
Bonuses that don't relate to specific performance criteria (for example, Christmas bonuses)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other bonuses	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Commission	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Over-award payments	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Shift loading	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Overtime	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Casual loading	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Benefits subject to fringe benefits tax (FBT)	<input type="checkbox"/> No	<input type="checkbox"/> No
Workers compensation payments, including top-up payments where no work is performed	<input type="checkbox"/> No	<input type="checkbox"/> No
Workers compensation payments, including top-up payments where work is performed	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Top-up payments (for example, when serving on jury duty or with reserve forces etc)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Payments when on maternity or paternity leave	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Pay for annual holiday leave taken	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Government (wage) subsidies (for example, Wage Subsidy Scheme)	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Annual leave loading	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Pay for sick leave taken	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes

Pay for long service leave taken	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Accrued annual leave, long service leave and sick leave paid as a lump sum on termination	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Payments in lieu of notice	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Redundancy payments	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other amounts you pay on termination of employment	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Director's fees	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Payments for performance in, or provision of services relating to entertainment, sport, promotions, films, discs, tapes, TV, or radio	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Payments you make to a contractor who is an employee under the Superannuation Guarantee Administration Act 1992 (labour portion only)	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
Dividends	<input type="checkbox"/> No	<input type="checkbox"/> No
Partnership and trust distributions	<input type="checkbox"/> No	<input type="checkbox"/> No
Payments for entering into a restraint of trade agreement	<input type="checkbox"/> No	<input type="checkbox"/> No
Payments for domestic or private work under 30 hours per week	<input type="checkbox"/> No	<input type="checkbox"/> No

➤ For more detailed information about ordinary time earnings, refer to Super guarantee ruling 94/4. To obtain a copy:

- visit our website at www.ato.gov.au and select 'Rulings, policies & law' – 'Legal Database homepage' and search for 'SGR 94/4', or
- phone us on **13 10 20**.

Note: Super guarantee ruling 94/4 will be withdrawn in June 2008 and will be replaced with a new ruling.

Calculating how much to pay

To work out how much super you must pay for each of your employees, multiply their ordinary time earnings for the quarter by 9%. You then pay this amount to a complying super fund by the quarterly payment cut-off date as outlined in the table below. Your employee's earnings start on the first day you employ them.

Quarter	Period	Payment cut-off date
1	1 July – 30 September	28 October
2	1 October – 31 December	28 January
3	1 January – 31 March	28 April
4	1 April – 30 June	28 July

When a cut-off date for payment falls on a Saturday, Sunday or public holiday, you can make the payment on the next working day after the cut-off date.

! If your employee's earnings base changes during a quarter, calculate the total earnings base at the end of the quarter (the total amount falling within the employee's relevant earnings base which was earned) and multiply it by 9% to make sure you are meeting your minimum super guarantee obligations.

EXAMPLE

Danni received a raise during the fourth quarter of the 2007–08 financial year (1 April to 30 June 2008) and her earnings base at the end of the quarter was \$8,000.

In the last quarter, and at the start of the fourth quarter, before her raise, she had an earnings base of \$7500. Under the super guarantee, Danni's employer, Erin, must contribute an amount equal to 9% of the \$8000 earnings base to Danni's super fund.

The super contribution Erin must pay for Danni for the fourth quarter of 2007–08 is worked out below.

Earnings base for the quarter	×	Charge percentage	=	Minimum super contribution for the quarter
\$8,000	×	9%	=	\$720

Erin must contribute at least \$720 to a complying super fund or retirement savings account for Danni by 28 July 2008, to avoid paying the super guarantee charge for the fourth quarter of the 2007–08 financial year.

! If you make super contributions under an award, you must check that the contributions are enough to satisfy both the award and the super guarantee requirements of 9%.

Maximum earnings base

There is a maximum limit on any employee's earnings base for each quarter of any financial year. You do not have to pay contributions for any earnings above this limit. The limit for each quarter in the 2007–08 financial year is \$36,470. This limit does not apply to other mandated contributions such as contributions you pay under an award.

➤ The maximum limit on any employee's earnings base for each quarter is indexed each year and is available before the start of the financial year. To find out the maximum limit:

- visit our website at www.ato.gov.au or
- phone **13 10 20**.

CLAIMING A TAX DEDUCTION

Generally, super contributions are tax deductible in the financial year you pay them. Before 1 July 2007, there were age based limits on the deductions that could be claimed.

EXAMPLE

Brett has five employees and he wants to claim a tax deduction for the super contributions he makes in 2007–08 in the same year's income tax return. To claim a tax deduction, Brett must have paid these super contributions to a complying super fund or retirement savings account by 30 June.

However, Brett pays super contributions for the fourth quarter of 2007–08 on 5 July 2008, so he cannot claim these fourth quarter contributions as a deduction until the end of the next financial year (2008–09).

! If the required super contributions are not paid by the relevant quarterly cut-off dates you will have to pay the super guarantee charge to us. The super guarantee charge is not tax deductible.

! You can **claim a full tax deduction** for super payments you make from 1 July 2007, for employees under the age of 75. Super payments are tax deductible in the financial year you pay them.

You can also claim a tax deduction for super payments you make for employees aged 75 and over, if you have to make the payments because your employee is under:

- an industrial award
- a determination, or
- a notional agreement preserving state awards.

WHERE TO PAY SUPER CONTRIBUTIONS

To meet your super obligations, you must pay your contributions to a complying super fund or retirement savings account. Many employees can choose the super fund their employer super contributions are paid into (see 'Offering your employees a choice of super fund' on page 14).

Complying super funds

A super fund is complying if it meets specific requirements and obligations under super law.

➤ You can check our register of complying super funds by visiting www.business.gov.au and selecting 'ABN Lookup' – 'Super Fund lookup'.

You can also talk to the fund's trustee to check the fund is complying. If they tell you in writing it is complying and you find out later that it is not, you are protected against penalties for paying contributions to a non-complying fund.

The fund must indicate that they:

- intend to accept your super contributions, and
- will continue to meet the relevant legal requirements.

If the fund is self-managed, you can ask for evidence from the trustee that it is a regulated super fund. This evidence must have originated from us and must include:

- for a new fund – a notice of registration called *Advice about regulation of your self managed fund*, or
- if the fund has been in existence for at least two years – a letter of compliance called *Notice of complying fund status – self managed superannuation fund*.

➤ If the fund is self-managed and you need evidence from us that it is a regulated super fund, phone **13 10 20**.

Many employers also have an award obligation to pay super contributions into a specified fund. If you are not doing this, you may not be meeting your award obligations, so we recommend you check any relevant industrial award for details.

Any super contributions you pay to a super fund or retirement savings account under an award arrangement will usually count towards meeting your super guarantee obligations. However, you must also ensure the fund or retirement savings account satisfies any choice of super fund obligations you may have.

⚠ If the super contributions percentage in an award is below 9%, you must pay extra contributions to meet this minimum level. If you do not do this, you will incur the super guarantee charge (see 'What to do if you haven't met your super obligations' on page 20).

⊖ If you pay a contribution to a non-complying super fund it:

- will not count towards meeting your super guarantee obligations
- will not be tax deductible, and
- may incur a FBT liability.

Accumulation funds and defined benefit funds

Most employers are dealing with either a complying super fund or retirement savings account.

There are two types of funds:

- 1 accumulation super funds (including retirement savings accounts), and
- 2 defined benefit funds.

Both are acceptable for super guarantee purposes, but the majority of funds used by the private sector are **accumulation funds**.

The way you measure your level of super support varies depending on the type of fund you contribute to.

Accumulation fund

You contribute at a certain rate and your employee's benefits on retirement are based on the accumulated net contributions plus earnings less expenses. The contributions you pay as a percentage of each employee's earnings base have to be at least equivalent to the minimum contribution level of 9%.

Defined benefit fund

You pay whatever contribution rate is required to provide your employee with a defined benefit when they retire. This defined benefit may be:

- a multiple of your employee's final salary
- a specified amount, or
- both.

In this case, an actuary (a financial professional who specialises in statistical analysis) must calculate your level of support and you must obtain a benefit certificate showing the notional employer contribution rate. The benefit certificate must show that the support you are providing for your employee is at least equivalent to the minimum contribution level of 9%.

Retirement savings account

A retirement savings account is a type of account offered by:

- banks
- building societies
- credit unions
- life insurance companies, and
- prescribed financial institutions.

It is used for retirement savings and is similar to a super fund. Retirement savings accounts are subject to member protection rules, so they must protect balances of less than \$1,000 containing some compulsory employer contributions.

Retirement savings accounts are capital guaranteed. This means contributions and interest on the account can only be reduced by fees and charges (not investment losses).

Retirement savings accounts are fully portable. This means the balance of the account can be transferred to another retirement savings account or a super fund.

⚠ As with contributions paid to super funds, contributions paid to retirement savings accounts are tax deductible and count towards your super guarantee obligations.

OFFERING YOUR EMPLOYEES A CHOICE OF SUPER FUND

Many employees have the option to choose the super fund that you pay their super into.

There are three steps you must follow when a new employee starts working for you, in order to meet your obligations.

Step 1: Identify your new eligible employees

⚠ When you employ new staff, you must check whether they are eligible to choose a super fund. This generally depends on the type of award or industrial agreement that you employ them under.

If you don't have any eligible employees, you don't have any further choice of super fund obligations.

Who is eligible to choose a super fund?

Your employee is entitled to choose their super fund if they are:

- employed under a federal award
- employed under a former state award, now known as a notional agreement preserving state award (NAPSA)
- employed under a state award or industrial agreement that does not require super contributions, or
- not employed under any state award or industrial agreement (including contractors who are regarded as eligible employees for super).

Who is not eligible to choose a super fund?

Your employee is not entitled to choose their super fund if you are already paying super contributions for them under or in accordance with a:

- state award
- state industrial agreement
- federal industrial agreement such as
 - an AWA
 - collective agreement
 - a pre-reform certified agreement (CA)
 - a preserved state agreement (unless choice is provided under the agreement), or
- award or agreement that stipulates a super fund that contributions are to be paid to.

➔ If you are not sure what, if any, award or industrial agreement covers your employee:

- visit the WageNet website at www.wagenet.gov.au
- phone the workplace relations department in your state or territory, or
- check with your employer association.

Step 2: Provide a *Standard choice form* to new employees who are eligible to choose a super fund

If you have a new employee who is eligible to choose a super fund, you must provide them with a *Standard choice form* (NAT 13080) within 28 days from the day they started working for you, unless, within that time, the employee provides you with details of their chosen super fund.

⚠ You must complete 'Section B' of the *Standard choice form* before you give the form to your eligible employee. 'Section B' includes details of your nominated super fund (also known as your default fund).

If your employee does not choose a fund, you must pay the super contributions for that employee into the fund you have nominated (see 'Employer nominated super funds (default funds)' on page 15).

⚠ You may like to consider providing a *Standard choice form* to your new eligible employee as part of their letter of engagement or on the first day they start work with you.

Other times you need to provide a *Standard choice form*

You also have to provide a *Standard choice form* within 28 days if:

- an existing eligible employee gives you a written request for a form (an employee can choose a fund as often as they want to but you only have to accept one choice every 12 months)
- you are unable to contribute to an employee's chosen fund or it is no longer a complying fund, or
- you change your employer nominated fund and you are not paying into a chosen fund for the employee.

⊖ Make sure the *Standard choice form* includes your employee's TFN so any contributions you pay are not subject to additional tax of 31.5%.

If the form does not contain your employee's TFN, it may be a good idea to let your employee know that their super fund will be liable to pay extra income tax on certain contributions made to their account. However, an employee is not compelled to supply a TFN and not doing so does not invalidate the employee's choice.

! You **do not** have to send a copy of the *Standard choice form* to us, or to your employee's chosen super fund. However, keep a copy for your own records for a period of five years (see 'Keeping proper records' on page 18).

➔ To obtain a copy of our *Standard choice form* (NAT 13080):

- visit our website at www.ato.gov.au or
- phone us on **1300 720 092**.

! The *Standard choice form* is a form approved by us. You do not have to use the *Standard choice form*, you can use an alternative document. However, the alternative document must contain all the information contained on the *Standard choice form*.

Step 3: Act on your employee's choice

You must start paying super contributions to your nominated fund to ensure you continue to meet your super obligations, if you have provided a *Standard choice form* to your employee and:

- they haven't chosen a fund, or
- you haven't accepted their choice of fund because they haven't provided all the information.

Under the super choice legislation an employee is not regarded as having chosen a super fund unless they have properly supplied the correct information required by the *Standard choice form*.

Once an eligible employee chooses a super fund, you have two months to arrange to pay contributions into that fund.

! If you don't meet your obligations, including paying your employee's super contributions to their chosen fund, you will have to pay the super guarantee charge to us. See 'What to do if you haven't met your super obligations' on page 20.

Employer nominated super funds (default funds)

When you offer your employee a choice of super fund you must tell them the name of the fund you will pay their super to if they do not choose a fund. This is referred to as your employer nominated super fund (or default fund). You can provide this information to your employees by completing 'Section B' of the *Standard choice form*. 'Section B' outlines details of your nominated super fund.

The super fund you choose must:

- be a complying fund (check our register of complying super funds by visiting www.business.gov.au and selecting 'ABN Lookup' – 'Super Fund Lookup'), and
- offer a minimum level of life insurance from 1 July 2008, as set out in the regulations (with some exceptions).

To make sure your nominated fund meets these requirements, check with the trustee or an authorised representative of:

- your current nominated fund, or
- a new employer nominated fund you are considering.

! Some super funds may request that you become a '**participating employer**' before you can pay contributions to them.

Being a participating employer may mean you have to make super payments more regularly (such as monthly instead of quarterly). If you don't want to become a participating employer, then discuss this with your employee's chosen super fund to find out how best to make super contributions on your employee's behalf.

If you agree to become a participating employer, complete all the necessary agreements before you start making payments.

— It is illegal for a super fund to give you benefits (for example, a free holiday) as an incentive to use their fund as your nominated fund. It is not illegal for a super fund to give benefits to your employees (such as financial literacy seminars or preferential death benefits) as an incentive to use their fund as your employer nominated fund.


Insurance requirements

From 1 July 2008, employer nominated super funds (also known as default funds) must offer minimum levels of life insurance death cover to members. An employer nominated super fund is the fund that an employer chooses to pay an employee's super guarantee contributions to if they do not choose a fund.

Your nominated fund must offer minimum life insurance for members:

- at a premium of at least \$0.50 per week for those under 56 years
- with at least the level of insurance cover shown in the following table, or
- at a level of cover equivalent to the following table if the contributions are made to a defined benefit fund on behalf of a defined benefit member.

Age range	Minimum level of life insurance cover
0–19	Nil
20 to 34	\$50,000
35 to 39	\$35,000
40 to 44	\$20,000
45 to 49	\$14,000
50 to 55	\$7,000
56+	Nil

 You can continue to contribute to your existing super fund, even if it does not meet the minimum life insurance requirements, until 30 June 2008.

From 1 July 2008, your nominated fund must offer minimum life insurance for members.

There are some instances where your super fund does not need to meet the life insurance requirements, for example, if you:

- are making contributions under a federal award or into a retirement savings account
- arrange insurance either with another super fund or with an insurance provider and it meets the requirements, or
- are unable to obtain insurance from the fund in respect of a particular employee due to the employee's
 - health
 - occupation (for example, a high-risk occupation), or
 - hours worked (for example, some casuals).

You can still contribute to a fund for an employee if the super fund you choose will not provide life insurance because of your employee's:

- occupation
- health, or
- working hours.


 For more information visit:

- www.superreview.com.au to obtain the contact details of your nominated fund to make sure that it is offering life insurance (most industry and retail funds and master trusts provide adequate insurance options), and
- www.business.gov.au and select 'ABN Lookup' – 'Super Fund Lookup' to check that your fund is a complying super fund.

Giving your employees information and advice


You can provide factual information to an employee about:

- what choosing a super fund is about
- your obligations under choosing a super fund, and
- what you can do to nominate a super fund as their chosen fund.

 Anyone providing financial advice is generally required by law to be licensed by the Australian Securities and Investment Commission (ASIC) to do so.

Unless you are licensed by ASIC to provide financial advice, do not make comments, recommendations or give advice about:

- the super fund an employee should choose
- the level of their super contributions, or
- whether an employee's super should be consolidated.

 If your employees want more information about how to compare and choose super funds, we recommend you tell them to:

- visit the ASIC FIDO website at www.fido.gov.au or
- phone ASIC on **1300 300 630**.

Choice of super fund liabilities


If you don't meet your choice of super fund obligations, including paying your employee's super contributions to the correct fund, you may be liable for a choice liability.

The choice liability is part of the super guarantee charge.

You incur the choice liability when:

- you have paid super contributions to a complying fund for your employee but not to the fund they chose, or
- you have not given your employee a *Standard choice form* within the required timeframe.

To avoid paying the super guarantee charge, you must pay at least the correct amount of super contributions (9%) to the correct fund for your employee by the quarterly cut-off dates.


 You will also incur the super guarantee charge if you charge your employee a fee for implementing their choice of super fund.

TAX FILE NUMBERS


Since 1 July 2007, there has been a new *Tax file number declaration* (NAT 3092) form for your new employees (starting on or after that date) to complete. You have to pass on your employee's TFN to their super fund within 14 days of receiving the form or when you make the first payment to the fund after receiving the TFN, whichever occurs last. This rule only applies if you have to make super payments for that employee.

If your new employee gives you their TFN, it is important you pass it on to their fund so:

- you'll avoid penalties
- the super fund can avoid paying extra tax on the amounts they receive (the tax would come out of your employee's account), and
- your employee won't miss out on super co-contribution payments.

 If you do not provide a new employee's TFN to their super fund or retirement savings account within the required timeframe, we may charge you a penalty of up to 10 penalty units (currently \$1,100) for each employee.

If one of your **current** employees gives you permission to pass on their TFN to their super fund, you must pass it on by the next time you make a super payment on their behalf. You can only pass on your employee's TFN to a fund if your employee gives you permission. One way they can give you permission is to complete a *Tax file number declaration* form.

 To obtain a *Tax file number declaration* (NAT 3092) form:

- visit our website at www.ato.gov.au or
- phone us on **1300 720 092**.

Employee contributions

If you have an employee who wants to make personal super payments as a payroll deduction, make sure they also give you their TFN to pass on to their super fund.

A super fund cannot accept your employee's personal contributions if it doesn't have their TFN.

To help your employee, you could include their TFN when sending personal contributions on their behalf.

KEEPING PROPER RECORDS

You can use whichever method suits you best to keep records of your super guarantee payments and choice of fund obligations. However, the following limitations apply:

- your records must be written in English (or in a format that can be easily accessed and converted into written English)
- you must keep your super records for five years, and
- if you keep electronic records, software must be available to access older floppy disks, CDs and computer records.

Super guarantee records

You must keep:

- records showing the amount of super you paid for each employee, and
- any documents that helped you calculate the amount of super you paid.

As with other business dealings, you must keep records that affect the amount you have to pay, such as advice from trustees about the funds you are contributing to. There are penalties for failing to keep accurate records.

If you ever incur a super guarantee charge, you must also keep records of how you worked out the amounts shown in your *Superannuation guarantee charge statement – quarterly*.

A penalty of up to \$3,300 for an individual and \$16,500 for a corporation applies for failing to keep records.

If you pay super under an award, you may have additional record keeping obligations. We recommend you check your relevant award or regulations.

Choice of super fund records

You must keep the following records to show you have offered your eligible employees a choice of super fund:

- Details of employees who you do not have to offer a choice of super fund to. For example, if an employee is not eligible to choose because the certified agreement that covers their employment requires super support to be provided to a specific fund.
- Confirmation that your fund meets the insurance requirements. This could be a copy of the product disclosure statement provided by the fund or a record of a phone conversation with an authorised representative of the fund about the level of insurance it offers.
- Evidence that you have provided the *Standard choice form* to all eligible employees. For example, you may issue the *Standard choice form* by email and keep copies of the emails, as well as the written information your employee provides when they nominate their chosen fund.
- Receipts or other documents issued by the fund showing you have made super contributions for that employee to their chosen fund.

Super guarantee reporting requirements

Some employers who are covered under workplace legislation, awards or agreements have an obligation to report super contributions on payslips.

Under tax law you do not have to report super contributions to your employees. However, doing so may help you manage employee relationships and staff enquiries, especially if you already have reporting systems in place.

CHECKLIST

- Have you worked out the super obligations you have for yourself, your employees and contractors, depending on your business structure? (See page 8)
- If you use a clearing house, have you allowed enough time for them to process your super guarantee payments before the quarterly cut-off dates? (See page 9)
- If you are paying your super guarantee contributions quarterly, have you processes in place to forward voluntary member contributions made from post-tax salary to your employee's chosen super fund? (See page 9)
- How much super do you have to pay? (See page 9)
- Have you checked to see if you are using an earnings base other than ordinary time earnings to calculate your super contributions? If the amount you pay is less than 9%, you will have to increase this amount to meet the minimum to avoid the super guarantee charge. (See page 9)
- Are you entitled to a tax deduction? (See page 12)
- Have you provided eligible employees with a *Standard choice form* to nominate their funds within 28 days of starting employment? (See page 14)
- Have you started paying super into your eligible employee's chosen fund within two months of the employee choosing a super fund? (See page 15)
- Have you checked that your employer nominated fund offers minimum life insurance for members? (See page 16)
- Have you provided your employee's TFN to their super fund (unless your employee has not given it to you)? (See page 17)
- Have you kept records to show that you have given your eligible employees a choice of super fund? (See page 18)
- Have you kept records of your super payments? (See page 18)

03

WHAT TO DO IF YOU HAVEN'T MET YOUR SUPER OBLIGATIONS

If you haven't met your super obligations as an employer, you have to lodge a *Superannuation guarantee charge statement – quarterly* (NAT 9599) and pay a super guarantee charge to us.

THE SUPER GUARANTEE CHARGE

The super guarantee charge is a charge you have to pay to us if you:

- do not pay enough super contributions (at least 9%) for your employee (this is called a super guarantee shortfall)
- do not pay super contributions by the quarterly cut-off date for payment
- do not pay super to your employee's chosen super fund (this is called a choice liability), or
- pay a super contribution to a fund after the cut-off date for payment.

The super guarantee charge is made up of three parts:

- super guarantee shortfall amounts (including any choice liability)
- interest on that amount (10% per annum), and
- an administration fee (\$20 per employee per quarter).

! The super guarantee charge is not tax deductible.

What you must do

If you have not met your obligations, you must lodge a *Superannuation guarantee charge statement – quarterly* by the due dates outlined in the table below and pay the super guarantee charge to us.

Quarter	Period	Due dates for lodgment of the <i>Superannuation guarantee charge statement – quarterly</i> and payment of the super guarantee charge to us.
1	1 July – 30 September	28 November
2	1 October – 31 December	28 February
3	1 January – 31 March	28 May
4	1 April – 30 June	28 August

When a cut-off date for payment falls on a Saturday, Sunday or public holiday, you can make the payment on the next working day after the cut-off date.

Once you lodge a statement and pay the super guarantee charge, we will transfer the super guarantee shortfall amount and any interest to your employee's chosen super fund.

! If you know you are going to miss the due date for lodging the *Superannuation guarantee charge statement – quarterly*, you can ask us for an extension of time to lodge.

You must make the request before the due date, in writing, stating why you need an extension. You must not automatically assume you have an extension of time to pay your super guarantee charge just because you have requested one. The nominal interest will continue to accrue until lodgment is made. The general interest charge (GIC) will then apply until the super guarantee charge is paid in full.

> You can obtain a copy of the *Superannuation guarantee charge statement – quarterly* (NAT 9599) by:

- visiting our website at www.ato.gov.au or
- phoning us on **1300 720 092**.

If you pay a super contribution after the cut-off date

If you pay a contribution to a super fund late, but before the due date for lodgment of your *Superannuation guarantee charge statement – quarterly*, you can choose to use this contribution to reduce the amount of super guarantee charge you incur. This is called the super guarantee late payment offset.

For late payments of super contributions to be eligible, they must have been paid:

- to a complying super fund after the cut-off date for payment but by the statement due date, and
- for the same employee the offset is claimed for.

To receive a late payment offset, choose this option on the *Superannuation guarantee charge statement – quarterly* and pay and lodge the statement by the dates outlined in the following table.

Quarter	Period	Due dates for lodgment of the <i>Superannuation guarantee charge statement – quarterly</i> with us	The last day you must have made a late payment to a super fund to receive the late payment offset
1	1 July – 30 September	28 November	28 November
2	1 October – 31 December	28 February	28 February
3	1 January – 31 March	28 May	28 May
4	1 April – 30 June	28 August	28 August

When a cut-off date for payment falls on a Saturday, Sunday or public holiday, you can make the payment on the next working day after the cut-off date.

If you have already lodged the *Superannuation guarantee charge statement – quarterly* and forgotten to ask for the *late payment offset* on the form, complete a *Superannuation guarantee late payment offset form* (NAT 14899).

You must do this within four years of the super guarantee charge for the relevant quarter becoming payable.

⚠ If you choose to reduce your super guarantee charge with your late payment to the super fund:

- this late payment will not be tax deductible for income tax purposes
- once you claim an offset you cannot change the offset amount, and
- any late contribution you use to reduce the amount of your super guarantee charge cannot be used as a pre-payment for current or future super contributions.

You may be able to use a late contribution for an employee for a future quarter, if the contribution is made not more than 12 months before the beginning of the quarter. If you choose this option, the contribution will be tax deductible, but you cannot claim an offset against the super guarantee charge.

➡ To obtain a copy of the *Superannuation guarantee charge statement – quarterly* (NAT 9599) or the *Superannuation guarantee late payment offset form* (NAT 14899):

- visit our website at www.ato.gov.au or
- phone us on **1300 720 092**.

EXAMPLE

Charles must pay super contributions for his employee, Amanda. Under the super guarantee, Charles must contribute \$1,000 to Amanda's super fund by 28 April 2008, for the quarter ending 31 March 2008.

However, Charles made the payment to the fund on 1 May 2008. This is:

- after the quarterly cut-off date of 28 April 2008, but
- before the due date for lodgment of the *Superannuation guarantee charge statement – quarterly* (28 May 2008).

As Charles missed the quarterly cut-off date, he must lodge a *Superannuation guarantee charge statement – quarterly* and pay us the super guarantee charge.

In this statement, Charles chooses to have the late payment applied as an offset to reduce the super guarantee charge he must pay. Charles lodges his *Superannuation guarantee charge statement – quarterly* on 10 May 2008.

➤ On 20 March 2008, the government announced it will generally allow employers to offset all super guarantee contributions paid late to a super fund. Currently, employers can only offset late contributions that are made within one month of the due date. The changes have not yet been legislated.

To find out more visit our website at www.ato.gov.au and select 'Rulings policies & law' – 'New legislation' – 'Superannuation'.

THE SUPER GUARANTEE CHARGE AND OTHER PENALTIES

It is much better for you and your business if you pay super contributions on time. If you don't:

- you have to pay
 - interest on the super contribution (10% per annum)
 - an administration fee (\$20 per employee, per quarter), and
 - the super guarantee shortfall
- you also incur the general interest charge (GIC) if you are late in lodging and paying your *Superannuation guarantee charge statement – quarterly*
- you have to put time into preparing a *Superannuation guarantee charge statement – quarterly* and calculating the charge, and
- the charge (including any super guarantee shortfall) is not tax deductible, unlike most super contributions.

As well as the super guarantee charge, there are several other penalties and charges that might apply, depending on your circumstances.

Choice liability

If you don't meet your choice of super fund obligations, including paying your employee's super contributions to the correct fund, you may be liable for a choice liability. The choice liability is part of the super guarantee charge.

General interest charge

If you lodge the *Superannuation guarantee charge statement – quarterly* but don't pay the super guarantee charge by the due date, you incur an additional charge. This is called the GIC and it accrues from the date your super guarantee charge is due up to the date you pay your super guarantee account in full. The GIC is calculated on a daily compounding basis and is tax deductible in the year you incur it.

Administrative penalty

If you pay less super guarantee charge than you're liable to pay because you made a false or misleading statement, in addition to charging you the shortfall itself, we can impose the base penalty amount of 75% of the shortfall.

The penalty is called an administrative penalty. This base penalty amount can vary according to your circumstances.

Failing to keep records

If you fail to keep adequate records, there is a maximum penalty of \$3,300 for an individual and \$16,500 for a corporation.

Not providing a *Superannuation guarantee charge statement – quarterly* when required

If you are audited and don't provide a statement or information when we ask for it, you may incur a penalty. The maximum penalty is 200% of the amount of the charge payable.

Arrangements to avoid your obligations

If you enter into arrangements to avoid certain obligations, such as your liability for the super guarantee charge, you may incur the charge you avoided and also an additional penalty. We can vary the base penalty according to your circumstances.

Amendments and objections

When we receive your *Superannuation guarantee charge statement – quarterly*, we treat it as an assessment.

You can ask for your assessment to be amended at any time within four years of the date we made it. You must provide copies of all supporting documentation with your amendment request.

You can object to an assessment within 60 days of the date we issued your assessment. To object to an assessment you must:

- provide us with the grounds for your objection in writing
- sign your statement (or have an authorised representative sign it), and
- provide us with copies of the evidence to support your arguments.

You still incur the super guarantee charge, even if you are objecting or requesting an amendment to your assessment. However, if you are successful, we will:

- refund any overpayment, and
- pay interest on this amount.

You cannot object to the GIC, although you can ask us to remit it if the circumstances are exceptional. To do this, explain in writing why you should not have to pay the GIC and send your request to us at:

Australian Taxation Office
PO Box 277
WTC VIC 8005

Appeals and review process

If your objection is not allowed in full, you may apply to the Administrative Appeals Tribunal for a review or appeal to the Federal Court against the decision within another 60 days.

CHECKLIST

- Are you making super payments on time and avoiding the super guarantee charge? (See page 8)
- Do you know how to pay the super guarantee charge if you have to? (See page 20)

04

PAYING SUPER UNDER SPECIAL CIRCUMSTANCES

SALARY SACRIFICING SUPER

If you are considering offering salary sacrifice arrangements to your employees, you may wish to speak to a financial adviser about the implications the arrangement may have on your business.

What is salary sacrifice?

Salary sacrifice is an arrangement where an employee agrees to forego part of their future salary or wages in return for their employer providing benefits of a similar value.

A contractual agreement with your employee to alter their salary package by exchanging part of their future salary or wages for another benefit is called a 'salary sacrifice arrangement'. A legitimate salary sacrifice arrangement cannot be made retrospectively for salary or wages which have already been earned.

What can an employee salary sacrifice?

Subject to your agreement, an employee can sacrifice their salary or wages into a variety of benefits including:

- super
- car fringe benefits, and
- expense payment fringe benefits, such as school fees, child care costs or loan repayments.

⚠ There is no legal requirement for you to offer salary sacrifice arrangements to your employees.

What are the benefits of making super contributions through a salary sacrifice arrangement?

If you make super contributions for an employee under an effective salary sacrifice arrangement, there may be benefits for both you and your employee.

Super contributions are not a fringe benefit

If salary sacrificed super contributions are made to a complying super fund, the sacrificed amount is not considered a fringe benefit for tax purposes. You will not be liable to pay FBT on the super contributions and the contributions will not be included as a reportable fringe benefit amount on your employee's payment summary. Salary sacrificed contributions are treated as employer contributions.

⚠ If salary sacrificed super contributions are made to a non-complying super fund, the contributions will be a fringe benefit.

This means you will be subject to FBT on the sacrificed amount and the super contributions will be recorded on your employee's payment summary as a reportable fringe benefit.

Super contributions are deductible

If your employee is under 75 years old, you can claim a deduction on all employer super contributions, including salary sacrificed contributions you make to their fund for the employee (assuming other deduction requirements are met).

However, if the employee has turned 75 years of age, you must have paid the super contribution within 28 days after the end of the month that the employee turns 75 years old. The only exception to this condition is if the contribution was required by an industrial award, determination or notional agreements preserving state awards.

Salary sacrifice reduces your employee's assessable income

The sacrificed component of your employee's total earnings is not their assessable income for taxation purposes. This means that the sacrificed component is not included as income on their payment summary and is not subject to PAYG withholding tax.

Super contributions are concessionally taxed in the fund

Super contributions made under salary sacrifice are taxed in your employee's super fund at 15%. Generally, this amount of tax is less than what your employee would pay if they did not enter into a salary sacrifice agreement and instead were subject to PAYG withholding tax on their earnings.

The concessional tax treatment, however, is limited to a certain amount of contributions made each income year.

➤ For more information about concessionally taxed contribution limits, see 'How much can an employee salary sacrifice' on this page.

EXAMPLE

On 1 July 2007, Sally and Zoë start work with the same organisation, for remuneration of \$45,000 a year. Zoë decides to enter into an effective salary sacrifice arrangement with her employer and will sacrifice \$10,000 of her earnings into her super fund. Sally receives her earnings of \$45,000 as salary.

The following table demonstrates the difference between Sally's and Zoë's assessable income and rates of tax at the end of the 2007–08 income year:

	Sally	Zoë
Remuneration	\$45,000	\$45,000
Less super salary sacrifice	–	\$10,000
Assessable income	\$45,000	\$35,000
Deductions	–	–
Taxable income	\$45,000	\$35,000
Income tax (based on 2007–08 tax rates)	\$7,950	\$4,550
Medicare levy	\$675	\$525
Tax on super sacrificed (15% in the fund)	–	\$1,500
Total tax and Medicare levy paid	\$8,625	\$6,575

How much can an employee salary sacrifice?

You will need to check the terms of the relevant industrial law, award, workplace agreement or employment contract under which your employee is working. If there are no limitations specified in the terms of their employment, there is no limit to the amount your employee can salary sacrifice.

However, when salary sacrificing super contributions, your employee will need to consider how the amount of contributions will affect the amount of tax paid in their fund.

Salary sacrificed contributions to a super fund form part of the 'concessional contributions' in the fund. Employer contributions made under the super guarantee also form part of an employee's concessional contributions. Concessional contributions are included in the assessable income of the fund and taxed at 15%. However, there is a cap on the amount of concessional contributions each member can enjoy each income year. If a person has contributions made to more than one super fund, all contributions are aggregated.

In the 2007–08 income year, the concessional contributions cap amount for people aged:

- 49 and under is \$50,000, this amount will be indexed in future years, and
- 50 and over is \$100,000 per annum until 30 June 2012 and is not subject to indexing.

Where concessional contributions exceed these caps, the excess amount may be taxed, in total, at the top marginal rate (45% plus 1.5% Medicare levy).

⚠ To avoid paying a higher rate of tax on super contributions, your employee should ensure that their salary sacrificed amount and any other concessional contributions to their super fund, do not exceed the cap amount such as:

- additional employer super guarantee payments, or
- employer payments above the super guarantee.

Does salary sacrificing super affect your super guarantee payments?

If your employee is an eligible employee for super guarantee purposes, you are required to pay a minimum amount into their super fund.

Super guarantee payments are calculated as 9% of each employee's earnings base, generally defined as ordinary time earnings (see 'How much super to pay' on page 9).

Making salary sacrificed super contributions into your employee's fund may affect your super guarantee obligations in the following ways:


- **Super guarantee payment is calculated on the reduced salary**

The amount of super guarantee you are required to pay for your employee is worked out on their earnings base. As entering into a salary sacrifice arrangement reduces your employee's earnings base, it will reduce the amount of super guarantee that you are required to pay.

- **The salary sacrificed amount counts towards your super guarantee payment obligations**

To enter into an effective salary sacrifice arrangement with your employee, you should have a written agreement that states the terms and conditions of that agreement. If you make the super contributions to an employee's fund under a salary sacrifice agreement, the sacrificed amount is treated as an employer contribution. This means that the salary sacrificed amount counts towards your super guarantee contribution obligations.

If the salary sacrificed super contribution is more than the super guarantee amount you are required to pay (currently 9% of your employee's earnings base), then you would not be required to pay an additional amount on top of the salary sacrificed amount.

 The terms of some awards or agreements may require an employer to pay a certain amount of super for an employee or may require super to be paid on the employee's pre-sacrifice salary.

In these circumstances, salary sacrifice amounts may not reduce the employer's super obligation as stated in the award or agreement.

EXAMPLE

James and Matthew's super contributions are concessional tax in their fund. They are both eligible employees for super guarantee purposes, and their employer is required to contribute a minimum amount into their super funds. They both earn \$45,000 during an income year.

The super guarantee amount the employer will be required to pay for James will be worked out at 9% of his salary of \$45,000 that is \$4,050.

Matthew has salary sacrificed \$10,000 of his earnings into his super fund. Therefore, the minimum super guarantee amount his employer will be required to pay will be calculated at 9% of his reduced salary of \$35,000 that is \$3,050.

However, as Matthew's sacrificed amount of \$10,000 is treated as an employer contribution it is more than the super guarantee amount the employer is required to pay. The sacrificed amount satisfies his employer's super guarantee obligations. This means Matthew's employer is not required by law to contribute an amount to his super fund in addition to the sacrificed amount of \$10,000. If agreed, these conditions should be stipulated in the agreement between Matthew and his employer.

Can you continue to make super guarantee payments based on your employee's pre-sacrifice salary amount?

If you or your employee want super guarantee payments to be made based on their earnings before salary sacrificing, you will need to negotiate this as part of the salary agreement or employment contract. Under the super guarantee law, however, you are not required to contribute more than the minimum legislated amount.

EXAMPLE

Mia and her employer agree as part of her salary sacrifice arrangement that, in addition to the \$10,000 she plans to salary sacrifice into her super fund, her employer will also make an additional contribution of \$4,050.

This contribution is the super guarantee amount Mia's employer would have paid based on her pre-sacrifice salary of \$45,000.

When do you need to make the salary sacrifice contributions into your employee's super fund to claim a deduction?

If you wish to claim a deduction for any sacrificed contributions you make to your employee's fund, you need to ensure that the contributions are made in the same income year that you intend to claim a deduction.

Under the law, you are not considered to have made a super contribution until the super fund actually receives the contribution. This means that if you pay contributions by post or through a clearing house, you need to allow sufficient time for the payment to be received by the super fund before you can consider that you have made the contribution.

When do you need to make contributions into your employee's super fund to satisfy super guarantee requirements?

Employers are required to make super contributions at least four times a year, to satisfy super guarantee requirements for each eligible employee. This requirement, however, is only for the minimum super guarantee amount an employer is required to pay under the law.

If all or part of an eligible employees' salary sacrifice contributions are to be used to meet your super guarantee liability for them, you need to make super contributions for that employee within 28 days after the end of each quarter, as shown in the table on this page.

Quarter	Period	Payment cut-off date
1	1 July – 30 September	28 October
2	1 October – 31 December	28 January
3	1 January – 31 March	28 April
4	1 April – 30 June	28 July

Where salary sacrificed super contributions are greater than the super guarantee amount, there is no legal requirement as to when you must contribute the additional amount (above the minimum super guarantee amount) into the fund unless it is included in the salary sacrifice agreement.

! Some industrial awards and super funds require an employer to make super contributions for their employees more regularly than the quarterly payments required under the super guarantee law.

EXAMPLE

Jack's salary is \$45,000 per annum. The total super guarantee payments required is \$4,050 ($\$45,000 \times 9\%$). For the 2007–08 income year Jack's employer makes quarterly super guarantee contributions of \$1,012.50.

At the end of the 2007–08 income year, Jack's employer will be entitled to claim a deduction of \$3,037.50 ($3 \times \$1,012.50$) for quarterly contributions made on:

- 28 October 2007
- 28 January 2008, and
- 28 April 2008.

As Jack's employer does not make the final contribution to Jack's super fund until 28 July, which is after the end of the 2007–08 income year, a deduction cannot be claimed for this contribution.

Jack's employer will, however, be able to deduct the amount in the income year that it was made.

Can you claim a deduction for salary sacrificed super contributions for your employee's spouse?

You can't claim a deduction for salary sacrificed super contributions for your employee's spouse. As the contributions are made for your employee's spouse in respect of your employee, you are not entitled to a tax deduction.

Contributions made to an employee's spouse's super fund also constitute a taxable fringe benefit. You would be liable to pay FBT on the amount and your employee's payment summary would need to include the amount as a reportable fringe benefit.

How do you ensure the salary sacrifice arrangement is effective?

The arrangement should be entered into before the employee performs the work to be an effective salary sacrifice arrangement and the arrangement must be prospective. That is, the arrangement must be for your employee's future earnings rather than any salary, wages or entitlements that they have already earned.

For example, an effective salary sacrifice arrangement cannot include annual or long service leave your employee has accrued before entering into the arrangement.

There should be an agreement between you and your employee. It is advisable that you and your employee clearly state and agree on all the terms of the salary sacrifice arrangement. If you enter into an un-documented salary sacrifice arrangement, you may have difficulty establishing the facts of your agreement.

Subject to the terms of any contract of employment or industrial agreement, employees can renegotiate a salary sacrifice arrangement at any time. Where a renewable contract exists, you and your employee can renegotiate amounts of salary or wages to be sacrificed before the start of each renewal.

Sacrificed salary must be permanently foregone. The sacrificed salary must be permanently foregone for the period of the arrangement. If, for example, a salary sacrificed super contribution is not made and instead cashed out at the end of a salary sacrifice arrangement accounting period, the amount cashed out is salary and is taxed at PAYG withholding rates.

When salary is sacrificed into superannuation the contributions are preserved in the fund or retirement savings account and cannot be accessed by the employee until they satisfy a condition of release such as attaining age 65.

What happens if a salary sacrifice arrangement is ineffective?

Super contributions made under an ineffective arrangement are considered a payment of salary and wages. The super contributions will be included in your employee's assessable income and subject to PAYG withholding tax.

The amount contributed to your employee's fund will be considered a member contribution rather than an employer contribution and you will not be entitled to a tax deduction for the sacrificed amount. In addition the contributions will count towards the employee's non-concessional contributions cap. If the cap is breached the employee will be subject to additional tax on the contributions.

As the contributions are not considered an employer contribution, you may also be liable to the super guarantee charge if you have not contributed a super guarantee amount in addition to the salary sacrificed super contributions.

What records do I need to keep?

When you enter into a salary sacrifice agreement you need to keep relevant documentation for five years. This includes:

- copies of your agreement, and
- documents showing any expenses.

➤ For more information about salary sacrificing and superannuation, visit our website at www.ato.gov.au and select 'For Businesses' – 'Super essentials' – 'Super topics explained'.

SUPER ON BACK-PAID SALARY OR WAGES

You must pay super contributions on salary or wages back-paid to former employees. If you back-pay salary or wages to a former employee, you have to pay super contributions on that back-pay, otherwise you will be liable for the super guarantee charge.

EXAMPLE

On 31 December 2007, Sue finished her employment with company ZYX. In March 2008, the company provided Sue with back-pay of 2% for the period from 1 July 2007 to 31 December 2007.

Company ZYX must pay a super contribution for the back-pay and they must do this in the quarter that corresponds to the payment, which is by the quarterly cut-off date of 28 April 2008. This should normally be paid into the fund that company ZYX made Sue's last super contribution into.

If company ZYX does not pay super on time to a complying fund or retirement savings account, they will have to lodge a *Superannuation guarantee charge statement – quarterly* and pay us the super guarantee charge. This charge includes:

- an amount for ZYX's unpaid super contribution
- interest, and
- an administration component.


We pay this amount, less the administration component, to Sue's super fund.

EMPLOYEES WORKING OVERSEAS

Australia has entered into international agreements with a number of countries. These agreements address the issue of double super coverage. Double super coverage occurs when an employee is sent to work temporarily in another country and you or your employee must pay super (or equivalent) contributions under the law of both countries for the same work.

The agreements on double super coverage form part of broader international agreements on social security between Australia and a number of other countries. Australia currently has agreements covering double super coverage with the following countries:

- Belgium
- Croatia
- Chile
- The Netherlands
- Portugal
- The United States of America (USA)
- Ireland
- Norway
- Switzerland
- Korea (expected start date – 1 October 2008)
- Greece (expected start date – 1 October 2008)
- Germany (expected start date – 1 October 2008), and
- Japan (expected start date – 1 January 2009).

 For more information about the social security aspects of international agreements and an update on the status of current negotiations for possible future agreements, visit the international section of the Department of Families, Housing, Community Services and Indigenous Affairs website at www.facsia.gov.au/international

How the agreements work

Under the agreements, you do not need to pay super contributions (or equivalent) in the country your employee has been temporarily sent to. However, your super obligations as an Australian employer still apply, and you must continue to pay compulsory super contributions in Australia.

This means you will be exempt from the other country's compulsory super contributions if you continue to pay super contributions for your employee while they work overseas.

EXAMPLE

Jack is an Australian resident working in Australia for an Australian employer. He is then sent by his employer to work in the USA for one year. Jack and his employer must pay compulsory social security (covering super) contributions under USA law. In addition, Jack's employer must still pay super contributions for Jack in Australia.

The agreement between Australia and the USA means Jack and his employer do not need to pay contributions under USA law. Jack's employer must request a certificate of coverage from us to ensure the USA exemption applies. Jack's employer will continue to make super contributions for Jack in Australia.

Similarly, a USA employee sent to work temporarily in Australia would not have to pay super under Australia's super guarantee legislation, as they and their employer would pay contributions solely under the US system.

Certificate of coverage

A certificate of coverage is evidence you can use to show authorities from other countries that you are covered by an agreement and exempt from paying super contributions (or equivalent) in that country.

You must apply to us for a certificate for the employee who will be working in another country. Where possible, make the application before your employee starts work in the other country.

- You can apply for a certificate of coverage:
 - online at www.ato.gov.au (search for 'certificate of coverage'), or
 - by phoning **13 10 20**.

By applying for a certificate of coverage for your employee, you are acknowledging that you will:

- continue to pay super contributions to an Australian super fund or retirement savings account on behalf of your employee while they are seconded to work overseas
- provide super contributions in accordance with the super guarantee laws, and
- keep records of the level of contributions you pay on behalf of your employee to Australian super funds or retirement savings accounts.

If you fail to meet these requirements for an employee, we will cancel the certificate of coverage and notify the relevant foreign authorities.

- For more information about our super agreements with other countries, visit www.ato.gov.au and select 'For Businesses' – 'Super essentials' – 'Super and international'.

MORE INFORMATION

For more information about the super guarantee, refer to:

- *Super – what you need to know* (NAT 71038)
- *Employment termination payments – when an employee leaves* (NAT 71043)
- *Employment termination payments – transitional arrangements* (NAT 70644), and
- *Employers and tax file numbers* (NAT70999).

For more useful information for your employees, refer to:

- *Super – what you need to know* (NAT 71039)
- *Super and your retirement* (NAT 71040), and
- *Super co-contribution – saving now for your future* (NAT 11589).

To obtain a copy of our publications or for more information:

- visit our website at **www.ato.gov.au**
- subscribe to 'What's New' at **www.ato.gov.au** to receive regular updates
- phone us on **13 10 20** between 8.00am and 6.00pm, Monday to Friday, to speak to a tax officer
- phone us on **1300 720 092** for copies of our publications, or
- write to us at:

Australian Tax Office
PO Box 3210
PENRITH NSW 2740

If you do not speak English well and want to talk to tax officer, phone the Translating and Interpreting service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

