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SGC Explanation

Superannuation Guarantee Contribution (SGC) is made on the Ordinary Time Earnings (OTE) of an eligible employee.

OTE are part of the normal definition of “Salary and Wages”. OTE is one component of Salary and Wages, but there are other components that make up Salary and Wages that are not considered to be OTE. See below table.

The Superannuation Guarantee Charge rate is now 9.5% as of the 1st July 2014; this rate will freeze until June 2021. The rate is proposed to gradually increase over the next years to 12%, subject to legislative process. At this stage it is scheduled to reach 12% in July 2025.

<table>
<thead>
<tr>
<th>Schedule of proposed super guarantee increases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Period</strong></td>
</tr>
<tr>
<td>1 July 2018 – 30 June 2019</td>
</tr>
<tr>
<td>1 July 2019 – 30 June 2020</td>
</tr>
<tr>
<td>1 July 2020 – 30 June 2021</td>
</tr>
<tr>
<td>1 July 2021 – 30 June 2022</td>
</tr>
<tr>
<td>1 July 2022 – 30 June 2023</td>
</tr>
<tr>
<td>1 July 2023 – 30 June 2024</td>
</tr>
<tr>
<td>1 July 2024 – 30 June 2025</td>
</tr>
<tr>
<td>1 July 2025 – 30 June 2026 onwards</td>
</tr>
</tbody>
</table>

Employers must provide a SuperChoice form to employees within 28 days of commencement of employment.

Superannuation payments are tax deductible to an employer if received by the superfunds by the 28th of the month following each quarter. Note that some superfunds require payment to be made by an earlier date in order to process the payments by the 28th.

Super Guarantee Charge is paid by employers who miss the payment date; it is not deductible and also attracts interest and penalties. See ICB resource Superannuation Guarantee Charge Statement for more detail.
Checklist for ‘Ordinary Times Earnings’ and ‘Salary or Wages’ for Superannuation Guarantee (SGC)

<table>
<thead>
<tr>
<th>SGC Included or Not</th>
<th>Salary or Wages</th>
<th>OTE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Awards and Agreements</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Normal Hours</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Overtime Hours</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Overtime Hours agreed over an award</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Agreement supplanting award – all hours worked</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No Ordinary Hours of work stipulated – all hours worked</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Casual Employee</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shift Loadings</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Overtime Payments</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Piece Rates – Or ordinary hours of work stipulated e.g., orchard worker paid per tree</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Overtime component of earnings based on ‘hourly driving rate’</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Terminations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In Lieu of Notice</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Unused Annual Leave</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Unused Long Service Leave</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Severance Pay (Genuine Redundancy)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Invalidity Payment</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Ex-Gratia Gift on termination (if not in clause of contract)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Allowances</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All allowances by way of unconditional extra payment eg, shift, first aid, meal etc.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Expense allowance expected to be fully expended eg, car allowance by rate</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Danger allowance</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Retention allowance</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Hourly on-call allowance in relation to OTE for doctors</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Bonuses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance Bonus</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bonus Labelled as ex-gratia but in respect of ordinary hours worked</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Christmas Bonus</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bonus in respect of overtime only</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Payment of Expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursement</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Petty Cash</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Reimbursement of travel costs</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Payments for unfair dismissal</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Workers compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Returned to work</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Not working</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Leave Payments</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual Leave</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Annual Leave Loading</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
<tr>
<td>Parental Leave – Maternity, Paternity, Adoption</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Ancillary Leave – Jury or Defence Reserve Duty</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Personal Leave</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Long Service Leave</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Remember that you should always consult the award, enterprise agreement or other industrial instrument that governs the worker’s pay and conditions. The relevant instrument may provide for super to be paid on categories not usually considered for super.

* See ICB resource Superannuation on Annual Leave Loading for details.

## Superannuation Thresholds 2018–2019

Superannuation is taxed at a lower rate than ordinary earnings. Contributing more than the following thresholds may require additional tax to be paid.

<table>
<thead>
<tr>
<th>Type</th>
<th>Conditions</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Super Guarantee Maximum Contribution Base</td>
<td>Per quarter</td>
<td>$54,030</td>
</tr>
<tr>
<td><strong>Note:</strong> super guarantee is not required to be paid for employees earning over this amount.</td>
<td>Per annum</td>
<td>$216,120</td>
</tr>
<tr>
<td>Concessional Contributions General cap</td>
<td>Per annum</td>
<td>$25,000</td>
</tr>
<tr>
<td>■ employer contributions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>■ salary sacrifice amounts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>■ personal contributions made as a tax deduction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Concessional Contributions</td>
<td>Up to age 65</td>
<td>$100,000 p.a.</td>
</tr>
<tr>
<td>■ personal contributions for which no tax deduction is claimed</td>
<td>Age 65–74 if meets work test</td>
<td></td>
</tr>
<tr>
<td>■ If super balance is greater than $1.6 million</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>Co-Contributions</td>
<td>For full $500 government co-contribution</td>
<td>$37,697 p.a.</td>
</tr>
<tr>
<td>■ Maximum at which co-contribution cuts out</td>
<td></td>
<td>$52,697 p.a.</td>
</tr>
</tbody>
</table>

## Superannuation on Annual Leave Loading

Under the old Ordinary Times Earnings (OTE) rules for leave loading, Superannuation Guarantee Contribution was not paid on leave loading. However, since 2009, whether or not superannuation is payable on annual leave loading is dependent on how the leave loading is determined as per the Superannuation Guarantee Ruling 2009/2.

- Superannuation **is** payable where the annual leave loading is an additional payment on top of annual leave, and the amount being paid for annual leave is the same as normally paid – this is deemed OTE for superannuation purposes.
- Superannuation **is not** payable where the annual leave loading is compensation for the loss of opportunity to work overtime – this is not deemed OTE.
- Check the award or other industrial instrument for guidance on whether the leave loading is related to overtime.
Salary Sacrificing Super

An employee may agree to forego part of their future earnings and sacrifice part of their salary or wages to their superannuation fund from their gross earnings. It’s important to review the above thresholds to ensure the total of salary sacrifice and super guarantee do not exceed the threshold.

Benefits:

- not considered a fringe benefit
- reduces employee’s taxable income
- super contributions taxed at concessional rate within the fund
- super guarantee amount is calculated on the reduced wage
- tax deductible for the business where the employee is under 75 years old

Salary sacrifice payments are considered to be an employer contribution and therefore can be submitted quarterly. The ATO has removed any references to payment dates other than the required quarterly payments as per SGC law. The ATO used to ‘recommend’ that post-tax contributions should be paid monthly, however this is no longer mentioned on their website. The timing of this payment is governed by an agreement between the employer and employee, otherwise the quarterly contribution remains.

Reportable Employer Super Contributions (RESC)

Some superannuation payments are considered to be RESC and are reported on the employee annual payment summary.

RESC are those contributions your employer makes for you where all of the following apply:

- The employee influenced the amount or rate of super the employer contributes.
- The contributions are additional to the compulsory contributions your employer must make under any of the following:
  - superannuation guarantee law
  - an industrial agreement
  - the trust deed or governing rules of a super fund
  - a federal, state or territory law

On deciding whether a value is RESC or not, it is important to take into account that all of the above reasons must apply, especially where the employee has ‘capacity to influence’.

The ATO states that the employee’s capacity to influence will be shown by:

- your relationship with the employee
- the involvement of your employee in the negotiations concerning the terms of the industrial agreement governing super contributions
- the size of the amount contributed for your employee relative to the compulsory contributions required to make
- the super contribution arrangements you have in place for other employees
Tax Deductibility of Superannuation Payments

For a business to claim a tax deduction for their superannuation payments, the payments must be made by the due date. Late payments of superannuation are not tax deductible.

Note that the deduction is allowed in the year that the payment is made. Therefore, for the fourth quarter, if the business wants to claim the tax deduction in the same financial year as the SGC is incurred, the payment must be received into the super fund by that 30 June. It is not enough to have left the business bank account by 30 June, unless the business is using the Small Business Superannuation Clearing House.

SGC Eligibility

**Employees who are not eligible for SGC:**

- employees paid less than $450 in a month (Hospitality award reduces this to $350),
- employees under 18 years working 30 hours or less per week,
- non-resident employees for work done outside of Australia,
- foreign executives who hold certain visas or entry permits,
- employees paid for domestic or private work 30 hours or less per week,
- employees who receive payments under Remote Jobs and Communities Program (formerly CDEP),
- members of the army, navy or air force reserves,
- employees temporarily working in Australia, covered by bilateral super agreement.

Self-Employed

Sole traders or partners in a partnership are not part of the SGC system. Self-employed people can make contributions to their own super fund, but it is not a legal requirement.

Super for Temporary Residents Departing Australia

For employees with a temporary visa and working in Australia, employers must make super guarantee contributions to a fund chosen by the employee, or the default fund of the employers.

On departing Australia, the employee can generally claim their super through DASP (Departing Australia Superannuation Payment). This can be claimed online or by paper before you leave Australia.

If the employee has not claimed their super after a minimum of six months after leaving Australia, the super will be transferred to the ATO and held until claimed.

Not all temporary visa employees can claim DASP; these include Australian and New Zealand citizens, permanent Australian residents, and Retirement visa holders and Investor Retirement visa holders.

Superannuation and Directors

Directors fees paid to a company director are considered to be ordinary time earnings, and therefore superannuation applies.

However, payment for the performance of duties as a member of an executive body (such as a body corporate) may be deemed salary or wages, which may not be “ordinary time earnings”, and therefore no super applies to these payments.
If a director is engaged as a contractor principally for their labour, then the ATO would deem them an employee for superannuation purposes. A director may legitimately be engaged as a contractor, and yet super may still be payable. *Dividends paid to a director of a company are not subject to super.*

According to the ATO's Superannuation Guarantee Eligibility Tool, a contracted director who invoices the business directly, and who receives director fees is eligible for super. However, a director invoicing through a company is not eligible for super to be paid by the business, because the director is deemed to be an employee of the entity invoicing the business.

This tool contradicts other advice and interpretations that would state if a company director receives remuneration for services as a company director then it would be considered payment as an employee and super would be a requirement.

**Superannuation and Contractors**

The ATO states “if a contractor (sole trader) is hired principally for labour being more than half of the contract then SGC should be considered”. The SGC ruling looks at key factors of **control**, **achieving a result**, and **use of tools and equipment**.

A person’s labour – whether physical, mental or artistic effort – may be considered for SGC if the person:

- is paid solely on their personal labour and skills
- performs the work themselves and does not delegate
- is paid by the hours worked, rather than result achieved

The phrase “achieve a result” is the distinction to pay SGC or not. A contractor must outline in a quote, timesheet, or invoice that their work will achieve a specific result, and that they are not simply being paid for hours worked under the direction of the employer/business owner.

**Example**

A subcontractor (sole trader) who works for a builder for a 3–6 month project, and works every day under the direction of the business owner, supplies his own tools, but no materials would be subject to SGC. Alternatively a subcontractor (sole trader) who quotes for the job, and installs using his own materials and tools to complete the job, can delegate work to his own employees, is working independently, and is not subject to SGC as he has achieved a specific result.

**Superannuation for Over 70 Years Old**

In the past, employers were not obliged to pay SGC to employees over the age of 70, however now all employees are entitled to mandatory SGC. This superannuation must be paid into an existing superannuation fund, and not paid directly to the employee. The employee can then withdraw from the fund as they require. Usual SGC guidelines and thresholds apply.

Their super funds must accept the SGC contribution. If the worker has closed their super fund, the employer can pay into the default fund.

If your employee is 65 years old and over, and the required work test is met, the employer can also make other contributions to their fund such as:

- voluntary contributions – e.g., salary sacrifice
- other amounts to the employee's super fund, such as administration fees and insurance premiums
The employee is also able to make personal contributions, but may not receive contributions from anyone else such as a spouse.

The required work test is the employee must work a minimum of 40 hours during a consecutive 30 day period in each financial year. *This does not include any unpaid work.*

<table>
<thead>
<tr>
<th>Worked 40 hours during consecutive 30 day period in each financial year</th>
<th>Aged 65–75</th>
<th>Aged 75+</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Meets Work Test</td>
<td>Does Not Meet Work Test</td>
</tr>
<tr>
<td>SGC</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Award Super</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Super Sal Sac</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Super After Tax</td>
<td>✓</td>
<td>✗</td>
</tr>
</tbody>
</table>

Work Test 75+

- No additional contributions can be made.
- Only mandatory contribution can be accepted by super fund.
- ‘Mandatory’ means required by law, award or enterprise agreement.

**SGC Employer Obligations**

**Obligations**

- Offer your employees a choice of fund.
  - Identify new employee is eligible – note that some employees may not be allowed to choose their own super fund if it is governed by an award or agreement.
  - Provide a superannuation choice form – either the ATO’s Superannuation Choice Form, or an employer-generated form that contains all of the required information.
  - Nominate a default fund (must be a MySuper product).
  - Act on employee's choice of fund (if provided).
  - If employee does not make a choice, pay into default fund.
  - If employer changes their default fund, affected existing employees must be given a new Super Choice Form.
- Pay superannuation guarantee before due date.
- Follow up any rejected payments to super funds – this is an employer obligation to ensure that payments are received by the super fund. Rejected payments may mean the super guarantee is received late by the super fund, and therefore may have implications for SGC Charge Statement and tax deductibility.
- Keep records for 5 years.
- Keep records in English, or in a form that can be easily accessed and converted into English.
SuperChoice Form

- An employer must provide a SuperChoice form to each employee within 28 days of commencement.
- The information required may be obtained from within other forms.
- If an employee has not returned the form within 28 days, the employer must pay into the default fund.
- An employer must adhere to the choice made within two months of receiving the form.
- The penalty for failing to provide a Super Choice Form can be up to $500 per quarter.

Employer Default Superannuation Fund – MySuper

Since the inception of SGC, an employer must nominate a default superannuation fund to be used in the event that an employee does not make a specific choice of their preferred super fund.

From 1st January 2014, employers will need to ensure that their default fund offers a “MySuper” product. This may require a change of default fund. If the employer needs to change fund, then they must provide a new super choice form to every employee who has not specifically chosen their own fund. (The employer must now pay to the new default “MySuper” fund, and cease paying to any previous default fund.)

MySuper funds have been created to benefit the employee, by complying with a set of standards that makes it easier to compare products. These products should be simple and cost-effective. The compliant funds will offer products that do not require the members to pay for services and features that they don’t need or use.

Superannuation Records to be Kept by Employer

- How you calculate any reportable employer super contributions
- How you calculate each of your employee's salary or wages and ordinary time earnings
- Copies of relevant salary sacrifice agreements you entered into with your employees
- Copies of relevant industrial agreements with your employees
- Evidence that you offered your eligible employees a choice of super fund – note that a penalty may apply to the employer if the choice form is not offered to employees.

Bookkeeper/BAS Agent Obligations

- Agree with business management/owner on the extent of the work you are engaged to do
- Provide employees a due date for the return of Superannuation Choice Form and employment details. Notify employees that, if a choice is not made, super will be paid into the employer’s default fund.
- Provide outstanding superannuation report to owner for payment
- Reconcile superannuation liability account to ensure outstanding superannuation amount is valid
- Advise business of due date for lodgement and payment of superannuation
- Advise business of their superannuation obligations
- Advise business of penalties and interest on unpaid superannuation
- Provide business a copy of ICB Business Information Fact Sheet – Superannuation
BAS Agent Role

As of 16th July 2013, superannuation guarantee contributions and charge statements are included as a BAS service. BAS agents are now allowed to ascertain and advise the client about their superannuation obligations for both employees and contractors.

Client failure to pay superannuation on time can place the bookkeeper/BAS agent in a difficult position due to their moral grounding and code of conduct. However, a BAS agent is not obliged to report outstanding super to the ATO – they are only obliged to notify the employer of their obligations.

The ATO says “If you pay a super contribution late to a super fund you must lodge a Superannuation Guarantee Charge Statement and pay super charge to us.”

Lodging and Paying Super

Superannuation Guarantee Payment and Lodgement Dates

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Period of Payment</th>
<th>Due Date</th>
<th>SGC Statement Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1 July – 30 September</td>
<td>28 October</td>
<td>28 November</td>
</tr>
<tr>
<td>2</td>
<td>1 October – 31 December</td>
<td>28 January</td>
<td>28 February</td>
</tr>
<tr>
<td>3</td>
<td>1 January – 31 March</td>
<td>28 April</td>
<td>28 May</td>
</tr>
<tr>
<td>4</td>
<td>1 April – 30 June</td>
<td>28 July</td>
<td>28 August</td>
</tr>
</tbody>
</table>

Note: These due dates will be different if your agreement or award requires monthly lodgements and payments. The trust deed of a fund or an award can override the SGC legislation in respect to the quarterly requirement.

Employer Additional Superannuation Must be Paid Monthly

An employee's contribution of additional super is where the employer has agreed to deduct an amount from their pay, and submit to the super fund on their behalf. This must be paid monthly by the 28th of the following month. This is a ruling from APRA. This does not include salary sacrifice arrangements that are compliant with ATO guidelines.

Payment Options Currently Available

- Use online payment system direct to each superannuation fund – if SuperStream compliant.
- Use clearing house facility provided by a super fund – this may be free or paid. Many are SuperStream compliant, but you should check this.
- EFT or BPAY payments – only if SuperStream compliant.
- Use government Small Business Superannuation Clearing House (SBSCH) – this is SuperStream compliant.
Superannuation Clearing House Options

1. ATO Small Business Superannuation Clearing House (SBSCH)

The Australian Government offers a free superannuation clearing house service to small businesses. This service is administered by the ATO. It is an easy solution for employers to reduce red tape and compliance costs associated with SGC obligations. The SBSCH also creates detailed reports for records and reconciliation.

Eligibility

- **From 1/7/15** for businesses with a turnover of less than $2 million, there is no restriction on the number of employees.
- **From 1/7/15** for businesses with a turnover of more than $2 million, the service will be limited to 19 employees.
- *It is expected that the SBSCH will be available to businesses with a turnover of up to $10 million in the near future.*

You register your employees' superannuation fund details and superannuation contribution amounts with the clearing house for processing. The clearing house lets you pay your superannuation contributions in one lump sum. The clearing house then distributes the superannuation contributions to the relevant employee superannuation funds.

*From the ATO:* “Under the law, you are not considered to have made a super contribution until the super fund actually receives the contribution, even if you use the services of a clearing house.”

Business Tax Deductibility for Super Guarantee Contributions

The ATO advises that “the date that the SBSCH receives the payment is taken to be the same day that the super fund receives it.” This means that, for all SG contributions, an employer can pay up to 30 June 2015 and the payment will be recognised.

Individual Tax Deductibility for Other Contributions

The cut-off date is different, however, for super contributions other than SGC, because of tax implications for the individual. In order for an employee's entitlement to reach the super fund by 30 June, it must be received by the SBSCH no later than 6:00pm (AEST) 23 June. This applies for all other payments such as salary sacrifice and employee additional super. (This is not strictly an employer’s concern, but worth knowing in case of employee queries).

2. Retail Clearing House

There are other retail clearing house services available, which charge for their services according to the number of payments being made. If using one of these clearing houses, make sure you check their terms of payment to ensure that the super guarantee obligations are received by the super funds before the specified due date – commonly super funds request payment by the 15th of the month.

3. Superfund Clearing House

You may be able to use your default or industry or other super fund as a clearing house – in some cases for free – otherwise for a fee. Many super funds offer this as a service if certain criteria are met, for example, if more than 50% of your employees are with the fund, that fund may offer a free clearing house service. Check with the superfund regarding any fees, terms and conditions that may be applicable.
SuperStream

SuperStream is being introduced to ensure employer contributions are paid in a consistent, timely and efficient manner to employees' super funds. It is intended that common standards of data transmission will make it easier for employers to comply with their obligations. Payments (and details of the payment) are to be made electronically.

SuperStream offers a simpler way of making super contributions and, for many employers, will provide a single channel for making contributions to multiple super funds. All the major software companies have guaranteed to provide for SuperStream data standards within their software by the time it is mandatory for employers to comply.

Under the standard, employers will need to:

- send all super data electronically (such as the employee's details, and the amount of super being paid);
- make contribution payments electronically;
- link data and payments with a unique payment reference number.

Some options to help you meet the standard include:

- upgrading your software so that it complies with the standard (if this is not automatically included in your software updates);
- engaging a service provider (clearing house) who can meet the standard on your behalf;
- getting advice from your super fund on how your business can meet the standard.

- SuperStream requirements from 1 July 2014
- Send all data electronically (see required fields listed below)
- Link payment and data with unique reference number
- Make payment electronically via:
  - Small Business Super Clearing House
  - Other clearing house
  - Electronic gateway direct to super fund
  - EFT, BPAY and cheque payments are being phased out
SuperStream Data Fields Required

**Employee**
- Name
- TFN (if provided)
- Member identifier
- Sex
- Date of birth
- Address
- Contact details
- Contribution type (e.g. employer SG contribution, salary sacrifice)
- Contribution amount

**Super Fund**
- Fund name
- ABN
- Unique Product Identifier (if required)

**Payment Details**
- Payment date
- Payment type
- Payment reference number (unique)
- Fund bank account details
- Fund name

SuperStream and Self-Managed Super Funds

Self-Managed Super Funds (SMSFs) are run by the members for their own benefit, and are also the trustees of the SMSF. The key principle of the SMSF is to provide retirement benefits to the members. The SMSF trustee can accept money contributions from various sources – for example, a Life Insurance Policy – but with some restrictions, being member’s age and contribution caps. You cannot generally accept an asset as a contribution from a member.

The income of your SMSF is generally taxed at a concession rate of 15%. For the fund to be eligible for this rate it must comply with the laws and rules of SMSF. The trustee of the SMSF must arrange an annual audit of the fund, and keep appropriate records. From 1st July, SMSF trustees are required to appoint an approved SMSF auditor who is registered with ASIC.

SMSF will also be subject to the SuperStream requirements; employees wishing to have their SGC paid into an SMSF will need to provide the employer with ABN, bank account, and electronic service address of the SMSF to their employer. Note that the electronic service address is different to an email address, and must be provided by a registered service provider that will act as the e-commerce gateway and message delivery service.
Exceptions

The SMSF is not required to be SuperStream compliant if it does not receive any employer contributions, and if it only receives personal contributions from its own members and related party employers.

For example, if a couple run their own business and pay into their own SMSF, they can do this directly without using a SuperStream solution.

- SuperStream requirements for SMSF
- Provide ABN, bank details, electronic service address to employer
- Electronic service address required to be by a registered provider
- Make payment electronically via the electronic service provider

Failure to Pay Super

Failure to Pay Super by Due Date (Superannuation Guarantee Charge Statement):

Failure to make superannuation payment by the due date requires the business to lodge a Superannuation Guarantee Charge Statement (NAT9599). The statement requires you to detail the shortfall of unpaid superannuation by employee, plus interest, plus an administration fee. Note that the original calculation of superannuation is based on Ordinary Time Earnings. When the SGC Statement is completed, the superannuation must be re-calculated based on all salary and wages. This may include earnings such as termination payments and overtime. Currently the interest is 10% per annum, calculated daily, and the administration charge is $20 per employee per quarter.

Unpaid Super

Director Penalties:

*From the ATO*: “The director of a company that fails to meet a PAYG withholding or SGC liability by the due date automatically becomes personally liable for a penalty equal to the unpaid amount.”

If an amount remains outstanding for more than 3 months, the ATO may issue a penalty notice to the director/s.

What can the bookkeeper/BAS Agent do?

- Process, reconcile, and prepare superannuation liabilities, and inform owner.
- Inform owner of their superannuation obligations in writing.
- Inform directors of their personal liability.
- Seek authority from client on how to act.
- Bookkeeper/BAS Agent can draft the Superannuation Guarantee Charge Statement.
- Bookkeeper cannot sign off on the calculations or submit the form.
- BAS agent cannot sign and lodge the form in consultation with the business owner and/or tax agent.
- Bookkeeper/BAS Agent can inform tax agent at end of year of unpaid superannuation.
ICB Recommendations

- The owner may receive advice from the ATO regarding their outstanding obligations, in which case you will need to take action of some sort.

- If you discover a late or missing payment, you have an obligation to advise the business owner / management.

- You must advise the business owner of their obligations in regard to the superannuation guarantee, and inform them of the implications of paying late – using the above examples as appropriate to demonstrate the potential difference in cost of paying on time versus a year late. ICB strongly suggests that you do this in writing. For example, you do not have an obligation to inform the ATO or anyone else of a breach of requirements, but you may not be a part of a deliberate breach of the requirements.

- You must advise your client that their obligations under the taxation laws are materially related to the BAS services you provide.

- **Do not make the decision to lodge the SGC Statement on your own.** This must be done in consultation with the business owner (and possibly the tax agent). If the client does not engage you to pay the SGC, or does not engage you to complete the SG Charge forms, then nothing in the law or code of conduct requires an agent to do work that they are not engaged by the client to perform.

- Discuss the wider ramifications with the client if proceeding with lodgement of SGC documents. For example, it may trigger an ATO audit and it may affect cashflow for the business if it is a significant amount outstanding over a long period! Ensure the business owner makes appropriate payment arrangements, or is in a position to pay the amount outstanding by the due date in the future, i.e., the 28th of the month after quarter end.

  *Make sure client understands the late payment is not tax deductible.*

- If you do go ahead and prepare and lodge the statement, get an Authority to Lodge SGC Statement declaration signed by the owner.

- If you receive written direction by the tax agent and/or owner in regard to this matter, follow their direction, unless it breaches the law.

- The ATO calculator tool is very fast and easy to use – we would recommend using it – however you may like to compare the calculations to your own manual calculations if you have the time.

- This form may only be completed by the business owner, BAS agent, or tax agent – not a bookkeeper. A bookkeeper may be involved in the completion and calculation of SGC obligations based on the advice and systems design of the business or registered agent.
Related References

- ICB – Superannuation Guarantee Charge Statement
- ICB – Superannuation on Annual Leave Loading
- ICB – SGC Calculator Spreadsheet
- ICB – Business Information Sheet – Superannuation Guarantee
- ICB – Help Your Clients with SMSFs get SuperStream Ready
- ATO – Legal Database – Superannuation Guarantee Ruling
- ATO – Super for employers
- ATO – Superannuation (super) standard choice form
- ATO – Super guarantee charge statement and calculator tool
- ATO – Self-managed super funds
- ATO – Super contributions – too much can mean extra tax
- ATO – Guide for employees and self-employed – reportable superannuation contributions
- ATO – Contributions you can accept (includes super for over 70 years old)
- ATO – Director Penalty Regime
- ATO – Key superannuation rates and thresholds
- ATO – Salary sacrificing super
- ATO – Super for employers – Contractors
- ATO – Small Business Superannuation Clearing House
- APRA – MySuper and ERF frequently asked questions (FAQs)
- The Tax Institute – APRA releases Circular I.A.2 – ‘Prompt Remission of Contributions’
Superannuation Guarantee Charge Statement Process

**Superannuation Guarantee**

- Inform business of their Superannuation Guarantee Contributions and penalties not to comply – provide ICE “SGC BUS INFO STATEMENT”

**Inform Business & Employee**

- If employee does not supply fund – set up ‘MYSUPER Default Fund’ and pay immediately

**Client Cannot Pay Due To Poor Cashflow**

- Inform business of their obligations and penalties in writing
- Inform business that SG charge statement is required
- If no – continue to monitor
- If yes – seek authority to prepare and lodge from business if unsure seek tax agent

**Still Not Paid By EOY**

- Inform tax agent @ EOY

**Employee Complains To ATO**

- Inform business of ATO notice
- Seek business authority and direction to resolve the matter
- Provide calculations to business or their agents if directed

**Super Guarantee Charge Statement**

- Inform business of ATO notice statement
- Inform business of what their obligations are and the penalties involved
- Gain authority from business to calculate, prepare and lodge SG charge statement
- (If unsure seek tax agent advice)

“MAKE NOTES OF ALL DISCUSSIONS & INSTRUCTIONS”