

## Employer update

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2008/09 is looking like it will be an interesting year with some long announced changes coming into effect and the new Government starting to flex its muscles in one of its favorite areas – compulsory superannuation.

### Key changes starting 1 July 2008

1. Super Guarantee contributions to be made on the basis of Ordinary Time Earnings.
2. New superannuation thresholds.
3. Late Super Guarantee contributions – Time extended to make contributions and still get the late contributions offset.

### Hot topics to watch out for

4. Return of superannuation to awards and default fund criteria.

### 1. Changes to superannuation guarantee contributions - ordinary time earnings applies to all from 1 July 2008

This has been on the cards since late 2004. On 1 July 2008 a uniform basis will apply for superannuation guarantee (SG) contributions of nine per cent ordinary time earnings (OTE).

This should not be a problem for most employers. Most employers are already contributing nine per cent of OTE or nine per cent of a more generous basis (such as an award/ industrial agreement). Employers who previously were required to make SG contributions on a more generous basis, can now meet their SG obligations using OTE (subject to their particular industrial/employment arrangements).

Some employers however may be required to increase their SG contributions. This would apply where an employer has been contributing under an arrangement that existed pre-1991 (including arrangements that continued after fund or business restructures).

Employers however should take this opportunity to review their arrangements to ensure they are contributing at least nine per cent OTE.

### Ordinary time earnings includes:

- salary;
- wages;
- shift and casual loadings;
- allowances (other than expense allowances);
- over-award payments;
- director's fees;
- commissions;
- annual/sick/long service leave payments;
- performance based bonuses; and
- overtime payments, if part of the employee's regular, normal or customary work. e.g. an employee works under an award providing for 38 hour week but enters into an individual agreement to work 60 hours per week. The overtime paid from working 60 hours (instead of 38 hours) is deemed to be OTE. See *ATO ID 2007/73*.

### Ordinary time earnings does not include:

- non-performance based bonuses (e.g. Christmas bonus);
- reimbursement of expenses and expense allowances;
- leave loading;
- termination payments (including lump sums in lieu of unused leave); and
- overtime payments (unless regular, normal or customary).



## 2. The ATO has released new super thresholds to commence 1 July 2008

	2007/08	2008/09
Tax on super lump sum - age 55 to 59	0% on the first <b>\$140,000</b>	0% on the first <b>\$145,000</b>
Employment termination payments	On the first <b>\$140,000</b> : · 16.5% age 55+ · 31.5% < age 55	On the first <b>\$145,000</b> : · 16.5% age 55+ · 31.5% < age 55
Redundancy/early retirement scheme payments	0% tax on the first \$7,020 plus \$3,511 per year service	0% tax on the first \$7,350 plus \$3,676 per year service
Superannuation guarantee - maximum contribution base <i>SG contributions not required in respect of earnings over this threshold</i>	<b>\$36,470</b> per quarter (or \$145,880 p.a.) - Max SG = \$13,129 p.a.	<b>\$38,180</b> per quarter (or \$152,720 p.a.) - Max SG = \$13,745 p.a.
Government co-contribution - maximum contribution base	Max co-contribution where income is up to <b>\$28,980 p.a.</b> Ceases at <b>\$58,980 p.a.</b>	Max co-contribution where income is up to <b>\$30,342 p.a.</b> Ceases at <b>\$60,342 p.a.</b>
CGT cap amount - lifetime limit <i>Contributions exempt from the non-concessional contributions cap up to this limit</i>	<b>\$1 million</b>	<b>\$1.045 million</b>

## 3. SG late payment offset – time to contribute extended

Since January 2006, an employer can make contributions after the quarter SG cut off date and these contributions will offset the SGC payable **if the late contributions were paid to the fund within the 28th day of the month after the due date for the quarterly SG contributions.**

This period has now been extended beyond the 28 days. Employers must use the ATO election form and make the contributions and election within four years of the end of the applicable SG quarter. A special transitional measure applies to employers who have old SGC liabilities – they can do a catch up and elect to offset the contribution against their SGC. *Tax Laws Amendment (2008 Measures No 2).*

## Watch this space...

### 4. Superannuation and awards

Under the new workplace relations legislation passed earlier this year and to commence 1 January 2010, superannuation returns as an allowable matter under new 'modern awards'. New modern awards will be approved by the rejuvenated Industrial Relations Commission. Superannuation Minister Nick Sherry has proposed to the Industrial Relations Commission that they take a more active role in nominating the default super fund under the modern awards and take into account the actual performance of the super fund. Underperforming funds beware...

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