

2 October 2026

Attn: Ms Michelle Maffia
The Contact Officer
Superannuation and Employer Obligations
Australian Taxation Office

By email: PaydaySuperPAG@ato.gov.au

Dear Ms Maffia,

Draft Superannuation Guarantee Determination SGD 2026/D1 Superannuation guarantee: working out the payments in respect of a person's labour under a contract referred to in subsection 12(3) of the *Superannuation Guarantee (Administration) Act 1992*

The Australian Bookkeepers Association, Chartered Accountants Australia and New Zealand, CPA Australia, the Institute of Public Accountants, the SMSF Association and The Tax Institute (together, **the Joint Bodies**) write to you as the peak professional accounting, bookkeeping, tax, financial advice and superannuation bodies in Australia.

We welcome the opportunity to comment on *Draft Superannuation Guarantee Determination SGD 2026/D1 Superannuation guarantee: working out the payments in respect of a person's labour under a contract referred to in subsection 12(3) of the Superannuation Guarantee (Administration) Act 1992 (SGD 2026/D1, the (Draft) Determination)*.

The Draft Determination provides helpful guidance on identifying qualifying earnings (**QE**) for workers who fall within subsection 12(3) of the *Superannuation Guarantee (Administration) Act 1992 (SGAA)*, particularly in relation to apportioning labour and non-labour components of contractual payments and applying paragraph 10A(1)(d) of the SGAA within the Payday Super framework.

Overall, we support the publication of the Determination and consider it will assist employers, agents, advisers and digital service providers in administering the new QE regime.

Clarifying the scope of the determination and the subsection 12(3) threshold

Our primary recommendation in this submission is that the final Determination should include a short introductory statement clarifying that it assumes a worker has already been determined to fall within subsection 12(3), and that the Determination is concerned solely with identifying the payments that constitute QE once that threshold has been satisfied.

We acknowledge that this is noted in paragraph 2 of the Draft Determination. However, we consider that greater prominence should be given to this point.

The Draft Determination appropriately focuses on the operation of paragraph 10A(1)(d). However, readers may incorrectly infer from the examples that the determination is also intended to explain when a contract is wholly or principally for a person's labour.

In practice, determining whether subsection 12(3) applies is often the threshold issue. A contract may often fall outside subsection 12(3) where, for example:

- the contract is principally for a non-labour component;
- the contract is genuinely for the production of a result or outcome;
- the worker has a genuine right of delegation; or
- the arrangement otherwise falls outside the established principles discussed in existing guidance.

The examples in the Draft Determination demonstrate the identification of QE once subsection 12(3) applies. However, users of this guidance may benefit from an express statement confirming that the Determination does not seek to revisit or determine the threshold subsection 12(3) analysis.

Such a statement could assist readers in understanding the intended scope of the Determination, and reduce the risk that examples are applied outside their intended context.

For example, Example 2 assumes that the contract is one to which subsection 12(3) applies. However, if the value of the equipment hire component substantially exceeded the labour component, the arrangement may raise a different threshold question as to whether the contract is principally for labour at all. That threshold issue is distinct from the apportionment exercise addressed by the Determination.

We consider that a short clarification in the introductory section would improve the usability of the Determination while preserving its focus on QE.

Additional matters for consideration

Availability payments, retainers and standby arrangements

The Joint Bodies consider that additional explanation regarding availability payments would be useful, particularly given the distinction between payments made for labour actually performed, and payments made to secure a person's availability.

Further examples illustrating the treatment of retainers, minimum engagement fees, and standby payments would improve certainty for employers operating these arrangements.

Allowances and reimbursements

The discussion of allowances and reimbursements raises several practical issues that warrant additional clarification. In particular, further guidance would be beneficial in circumstances involving:

- partial reimbursement of an expense;
- amounts paid regardless of whether expenditure is ultimately incurred;
- arrangements where contractual terms affect whether a payment is properly characterised as an allowance or reimbursement;
- on-charged third-party costs; and
- foreign currency expenditure.

Foreign currency transactions, in particular, may create practical difficulties because exchange rate movements, conversion costs, and banking charges can mean that a reimbursement does not precisely align with the original expense. Additional guidance on the interaction between reimbursements, expense allowances and third-party costs would therefore assist employers.

Overtime and on-call payments

Another issue that may benefit from additional explanation is the different treatment that can arise between ordinary employees whose overtime or on-call amounts may fall outside ordinary time earnings, and payments captured under paragraph 10A(1)(d) for workers falling under subsection 12(3).

A short explanatory note highlighting this distinction could help prevent employers from inadvertently applying ordinary time earnings concepts as they relate to ordinary employees when determining QE under paragraph 10A(1)(d).

Valuation methodologies and evidence

While the discussion of valuation methodologies is helpful, additional examples demonstrating the practical application of the reasonable market value approaches would further assist taxpayers. In particular, further guidance could be provided regarding:

- acceptable valuation methodologies;
- evidentiary requirements;
- acceptable documentation and record-keeping practices; and
- arrangements involving software licences, intellectual property and other commercially valuable non-labour assets.

We also note that Example 3 values the labour component first and attributes the residual amount to the software licence. Consideration could be given to including a complementary example where an independently identifiable non-labour asset is valued first and the labour component is calculated as the residual amount.

Instalments and part-payments

Further clarification regarding the treatment of instalment payments and part-payments would also be valuable. Employers frequently pay invoices progressively, yet the Draft Determination provides limited guidance on how labour and non-labour components should be apportioned where only part of an invoice is paid.

We consider that clarifying the expected approach in these situations would assist employers in complying with their Payday Super obligations while maintaining consistent treatment across different payment arrangements.

We welcome SGD 2026/D1 and support the ATO's objective of providing practical guidance on the operation of paragraph 10A(1)(d) under the Payday Super framework. We consider that clarification of the Determination's scope, together with the additional matters outlined above, would further improve certainty, reduce compliance costs, and assist employers in implementing the new regime consistently.

If you would like to discuss any of the issues we raise in our submission, please contact Richard Webb, Superannuation Lead, CPA Australia at richard.webb@cpaaustralia.com.au.

Yours faithfully,



Peter Thorp
Chairman
Australian Bookkeepers Association



Tony Negline
Superannuation & Financial Services
Leader
Chartered Accountants Australia and
New Zealand



Richard Webb
Superannuation Lead
CPA Australia



Tony Greco
Senior Tax Advisor
Institute of Public Accountants



Tracey Scotchbrook
Head of Policy and Advocacy
SMSF Association



Julie Abdalla
Head of Tax & Legal
The Tax Institute