Introduction for employers

Super

What employers need to know

Australian Government
Australian Taxation Office

NAT 71038-07.2007

What every employer needs to know about super.

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.

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 1 July 2007. 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 more recent versions on our website at **www.ato.gov.au** or contact us.

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Finding what you need to know

Changes at a glance

From 1 July 2007, the following changes to super affect you, as an employer.

- When an employee gives you a *Tax file number declaration* form, you must pass their tax file number (TFN) on to their super fund.
- You can claim a full deduction for all contributions to super funds you make on behalf of your employees, provided certain conditions are met.
- 'Eligible termination payments' have changed to 'employment termination payments' and generally can no longer be rolled over into super funds – other new rules also apply.
- Reasonable benefit limits (RBLs) have been abolished and you will not have to report payments made after 30 June 2007 for RBL purposes.

There will be no major changes to super guarantee obligations until July 2008. For now, you continue to pay super of at least 9% of each employee's earning base to their chosen super fund by the cut-off dates.

However, from 1 July 2008, the only earnings base you can use to calculate super contributions for your eligible employees will be ordinary time earnings. This is the amount an employee earns for their ordinary hours of work.

There are no changes to your 'choice of super fund' obligations and your eligible employees can still choose which super fund you pay their super into.

Refer to 'More information' at the end of this guide for ways to find out more about your 'choice of super fund' obligations or recent changes to super.

What you need to know about super

The superannuation guarantee

The superannuation guarantee is a system that was introduced on 1 July 1992. It is in place to make sure employers will pay super for their employees, in addition to their salary or wages.

Employers

You're an employer if you employ workers 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 worker under a contract.

Like other employers, including government organisations, statutory authorities or municipal bodies, you have to pay super for your eligible employees.

Conditions for paying super

Generally, you have to pay super for your employees if they:

- are aged between 18 and 70
- are paid $450 (before tax) or more in a calendar month, and
- work full-time, part-time or on a casual basis.

You also have to pay super for employees who receive a superannuation pension or annuity while they're still working. This includes employees who qualify through the 'transition to retirement' measure.

The minimum super amount you have to pay is 9% of each eligible employee's earnings base.

It's important to pay the correct amount of super by the cut-off date each quarter to avoid paying the *superannuation guarantee charge*.

There are a number of circumstances when you do not have to pay super for an employee. To find out more about them, visit our website at www.ato.gov.au

Remember, any super you pay for your employees is tax deductible. However, the superannuation guarantee charge is not.

Employee contributions

Super payments that your employees make through your payroll system, after tax has been deducted from their salary or wages, **do not** count towards your super guarantee obligations. This is the case even if you have arranged for their personal payments to be paid into their super accounts.

However, super payments your employees make to their own super account through a salary sacrifice arrangement **can** count towards your super guarantee obligations, however you may choose to pay the full 9% super on top of any salary sacrificed amount made by the employee.

Choosing a fund

When you choose a fund to pay super into, make sure it's a complying fund that meets the minimum insurance requirements.

You may also have to offer your eligible employees a choice of super fund. They may wish to use a different fund to the one you have selected.

What is a complying fund?

A complying fund is a super fund that complies with the super laws and regulations. Though most funds comply, you should check by asking the fund's trustees or managers whether the fund is a complying super fund.

You should also ask the fund to confirm in writing whether:

- they intend to accept your super payments
- you need to enter into any participating employer agreements, and
- they will continue to meet legislative requirements.

If they tell you in writing that the fund complies and you find out later that it doesn't, don't worry – you're protected against penalties for paying into a non-complying fund.

What are the minimum insurance requirements?

Most super funds will have to offer minimum life insurance amounts to their members after 30 June 2008 unless certain circumstances apply, such as when you:

- make super payments under a federal award or into a retirement savings account, or
- arrange insurance either with another super fund or with an insurance provider and it meets the requirements.

If the super fund you choose will not provide insurance for a particular employee because of their occupation, health or the hours they work, you can still contribute to the fund for this employee, but you will have provide insurance through a different arrangement.

When to make super payments

You have to pay super for all your eligible employees to the correct super fund by the cut-off dates each quarter. These dates are listed below.

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

When a cut-off date for payment falls on a Saturday, Sunday or public holiday, payment may be made on the next working day after the cut-off date.

Remember, if you pay any super contributions directly to a fund after the cut-off date, you will still have to pay the full super guarantee charge to us. You need to complete a *Superannuation guarantee charge statement – quarterly* (NAT 9599) to make the charge payment.

Super for your new employees

Employees

An employee is anyone who receives salary or wages in return for their labour or services.

For super guarantee purposes, employees include people entitled to be paid for their duties as a director of a business. An employer's family member who works in the business may also be eligible for super.

Contractors

You may have to make super payments for contractors you pay under a contract that is wholly or principally for labour (that is, physical labour, or mental or artistic effort) even if the worker quotes an Australian business number (ABN). A contract is principally for labour if more than half of the dollar value of the contract is for the person's labour.

You may not have to pay super if you make a contract with someone other than the person who will actually be providing the labour.

We have electronic tools to help you work out:

- **if someone is an employee or a contractor**
- **if someone is eligible for super, and**
- **how much super you have to pay for each eligible employee.**

To use the Employee/contractor or Superannuation eligibility decision tools and Superannuation contributions calculator, visit our website at www.ato.gov.au and select Rates tools and calculators – For Businesses.

Choice of super fund

Many employees can choose the super fund their employer pays their super into.

Can all new employees choose their fund?

Your employees can choose their super fund if they are:

- under federal awards
- under former state awards, now known as 'notional agreement preserving state awards'
- covered by another award or agreement that doesn't require superannuation support, or
- not employed under any state award or industrial agreement (including contractors paid principally for their labour).

Your employees cannot choose their super fund if you are paying them under a:

- state award
- state industrial agreement, or
- federal industrial agreement such as an Australian workplace agreement (AWA), a certified agreement (CA) or a preserved state agreement.

How does an employee choose their fund?

If you have a new employee who is eligible to choose their super fund, you must provide them with a *Standard choice form* within 28 days of the day they start work with you. You can provide contractors and seasonal workers with a *Standard choice form* the first time they work for you and refer to it whenever they work for you again.

You only need to pay into one fund for each employee.

Remember to provide your eligible new employees with a *Standard choice form* on time to avoid penalties. You also have to include details of your default super fund on the form.

To obtain a *Standard choice form* (NAT 13080):

- **download a copy from our website at www.ato.gov.au or**
- **phone us on 13 10 20 and we will post a copy to you.**

If you photocopy this form for your employees, remember to copy both sides (front and back).

What if an employee does not choose their fund?

If your employee does not choose a fund, you have to pay super for that employee into the fund you have chosen (your default fund).

An employee does not have to choose a fund but you must give them the choice if they are eligible. Remember to keep a record of the offer you made.

When do I switch to the employee's chosen fund?

If your employee chooses a super fund, you have up to two months before you have to make super payments into that fund to avoid penalties.

Do I have to accept the employee's choice?

You do not have to accept the employee's choice of fund if:

- the employee has not provided all the information required, or
- the fund would require you to become a 'participating employer' before it is willing to accept super payments from you, and you do not want to accept those conditions.

Being a 'participating employer' may mean you have to make super payments more regularly (such as monthly instead of quarterly). If you agree to become a 'participating employer', complete all necessary agreements before you start making payments.

If you do not accept the employee's choice of fund, you must make payments for the employee into your chosen fund.

When to start paying super

You have to pay super for eligible employees from the first day you employ them. This is the case even if the award or contract they're on says there is a qualifying period before you have to start paying. This is because there is **no qualifying period** under super law.

Tax file numbers

New employees

From 1 July 2007, your new employees will have to complete a new *Tax file number declaration* form. After this, you have to pass on your employee's tax file number (TFN) to their super fund within 14 days of receiving the form or when you make the first payment to the fund, whichever occurs last. This rule only applies if you have to make super payments for that employee.

If your new employee provides you with their TFN, it's 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.**

Employee contributions

If you have employees who wish to make personal super payments as a payroll deduction, make sure they also give you their TFN to pass it on to their super fund. The super fund cannot accept your employee's personal contribution if it doesn't have their TFN.

For more information about super and tax file numbers, refer to *Employers and tax file numbers* (NAT 70803).

Check what you know

We've put together the following checklist for you to use to be sure you're aware of everything you need to know about paying super for your new employees.

- [ ] Are your employees and contractors eligible for super? (see pages 3 and 5)
- [ ] Is your employee eligible to choose their own fund? (see page 6)
- [ ] Have you provided eligible employees with a *Standard choice form* to nominate their fund within 28 days of starting employment? (see page 6)
- [ ] Have you started paying super into their chosen fund within 2 months? (see page 7)
- [ ] Have you kept records to show that you've given your eligible employees a choice of super fund? (see page 11)
- [ ] Have you provided your employee's TFN to their super fund (unless the employee has not provided it to you)? (see page 7)

Super for your current employees

Choice of super fund

If you have a current employee who is eligible to choose their fund, you must provide them with a *Standard choice form*.

For more information, refer to 'Can all new employees choose their fund?' on page 6.

If you change your employer fund or you find out that a particular fund is no longer a complying fund, you must provide a *Standard choice form* to all your affected employees within 28 days.

Employees can only nominate one fund every 12 months. You do not have to accept an employee's request for payments to be made to a new fund if they have already changed funds within the previous 12 months.

Paying super

You have to pay super for your eligible employees at least four times a year, within 28 days after the end of each quarter of the financial year.

You can make payments more regularly than quarterly if you wish. For example, you can pay fortnightly or monthly if you choose, so long as the total amount you owe for the quarter is paid by the quarterly cut-off dates. Refer to page 4 to check what the cut-off dates are. You may also need to meet other super requirements set out in relevant awards and contracts, so look into them to be sure you're doing the right thing.

The best way of meeting your obligations is to pay the full amount of super you owe by the cut-off date each quarter. The full amount of super payments you make this way are tax deductible.

If the quarterly cut-off date falls on a weekend or public holiday, you should make the payment by the next working day.

How much do I have to pay?

The amount of super you have to pay is 9% of each eligible employee's earnings base for the relevant quarter. To avoid paying the superannuation guarantee charge, you need to pay the full 9% by the cut-off date each quarter.

To help you work out how much super you have to pay for each employee, use our online super contributions calculator by visiting our website at www.ato.gov.au

What is an employee's earnings base?

The earnings base for most employees is their 'ordinary time earnings', which is generally what they earn for their ordinary hours of work.

However, some employees do not have 'ordinary time earnings'; rather, the basis of their super is another earnings base. This may be contained in:

- an industrial award
- an existing agreement they have with their employer
- a fund's trust deed, or
- a law.

If these earnings bases currently apply, you can use them until 30 June 2008 but you will have to use 'ordinary time earnings' after that time.

If an employee's earnings base changes from quarter to quarter, remember to work out the amount of super you pay in line with the earnings base changes.

If the super contributions percentage in an award is below the minimum 9%, you will have to pay extra to meet the minimum amount and avoid penalties.

Can an employee add to their own super?

Your employees can add to their own super from their pre-tax (salary sacrifice) or after-tax income.

If you offer your employees the option of negotiating a salary sacrifice:

- you can claim a full tax deduction for the amount your employee sacrifices into their super, even if they pay more than the compulsory amount
- the amount your employee sacrifices can count towards the 9% super you have to pay, depending on the arrangement you have with them, and
- your employee will increase their total super benefits and reduce their taxable income.

From 1 July 2007, there will be a cap on the amount of employer contributions (including salary sacrificed employee contributions) that will be taxed at concessional rates. For the 2007–08 financial year, the cap is $50,000 but it will be indexed annually and rounded down to the nearest $5,000. For the 2007–08 to 2011–12 financial years, a higher cap of $100,000 (which is not subject to indexation) applies to those who are aged 50 years or over at the end of the year. Contributions in excess of the cap will be taxed at an effective rate of 46.5%.

Your salary sacrificing has to meet certain requirements. For more information about salary sacrificing, visit our website at www.ato.gov.au

If your employee wishes to make super payments from their after-tax income, from 1 July 2007, they must provide their super fund with their TFN before they can do so.

Remember, payments your employees make from their after-tax income to their super fund do not count towards the 9% super you have to pay. However, payments they make from their before-tax income through a salary sacrificing arrangement can count.

TFNs for current employees

If one of your current employees gives you permission to pass on their TFN to their superannuation fund, you need to 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 they give you permission. One way an employee can give permission is to give you a *Tax file number declaration* (NAT 3092).

If you do not pass on an existing employee's TFN:

- the super fund may have to pay extra tax on the amount they receive (this tax will come out of your employees account)
- the super fund may not be able to accept personal contributions from your employee, and
- your employee may miss out on super co-contribution payments.

Tax deductions

From 1 July 2007, you can claim a full tax deduction for super payments you make for employees under the age of 75. Super payments are tax deductible in the financial year in which 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, determination or notional agreement preserving state awards.

Remember, you cannot claim tax deductions for penalties you pay such as the superannuation guarantee charge.

Charges

There are a number of reasons why you could incur extra costs in relation to super. The best way to avoid paying these charges is to make sure you:

- offer all eligible employees a choice of super fund within 28 days of them starting work
- pay the minimum 9% super into an employee's chosen super fund, and
- make all your employees' super payments by the quarterly cut-off dates each year.

The two most common charges you could incur are the:

- **choice liability** – if you have not offered an eligible employee a choice of super fund or you have paid their super into the incorrect fund, and
- **superannuation guarantee charge** – if you do not pay at least the minimum amount of super to the correct super fund by the cut-off date.

Remember, you cannot claim tax deductions for the choice liability and superannuation guarantee charge.

For more information about the superannuation guarantee charge, refer to *How to complete the superannuation guarantee charge statement – quarterly* (NAT 9600). To obtain a copy:

- **visit our website at www.ato.gov.au and search for '9600', or**
- **phone our publication ordering service on 1300 720 092.**

We are also developing new online calculators to help you work out the amount of superannuation guarantee charge you are liable to pay. Subscribe to 'What's new' on our website to keep updated.

Record keeping

You can use whichever method suits you best to keep records of your super payments and choice of super fund, with the following limitations.

- Your records must be in English (or in a form that is easily accessible and convertible into English)
- you must keep them for five years, and
- if you keep electronic records, you should use software that is broadly available and can read older floppy disks, CDs and computer records.

Keeping records of super payments

Your records of the super payments you make should clearly show the amount of super you paid for each employee and how you worked out that amount. You should also keep records of any information that helped you work out the amount of super you paid – this may include advice from trustees of super funds to which you're making payments.

If you ever incur a superannuation guarantee charge, you also have to keep records of the amount you paid and how you worked out that amount.

The records you have to keep may differ depending on whether you pay super under an award. This may include reporting your super payments on your employees' payslips.

For more information, visit www.workchoices.gov.au

Keeping records for choice of super fund

You need to maintain records that show you have offered your eligible employees a choice of super fund. These records include:

- evidence that shows you provided the *Standard choice form* to all your eligible employees
- the written information your employees provide when they nominate a fund
- receipts or other documents issued by the fund showing you have made super payments for your employee to their chosen fund
- confirmation that your fund meets the insurance requirements, and
- details of employees who do not have to be offered a choice of super fund.

If your employee asks you for more information about their super entitlements, you can give them, or refer them to:

- ***Super – what you need to know* (NAT 71039), and**
- ***Super and your retirement* (NAT 71040).**

To obtain copies of these publications, refer to 'More information' at the back of this guide.

Check what you know

We've put together the following checklist for you to use to be sure you're aware of everything you need to know about paying super and keeping good records.

- [ ] Are your employees eligible for super? (see pages 3 and 5)
- [ ] Are any of your employees eligible to choose their super fund? (see pages 6 and 8)
- [ ] Have you provided eligible employees with a *Standard choice form* and kept evidence of this? (see pages 6 and 11)
- [ ] How much super do you have to pay? (see page 9)
- [ ] Have you kept records of your super payments? (see page 10)
- [ ] Are you making super payments on time and avoiding the superannuation guarantee charge? (see page 4)
- [ ] Have you provided your employee's TFN to their super fund (unless the employee has not provided it to you)? (see page 10)
- [ ] Do you know how to pay the superannuation guarantee charge if you have to? (see page 10)
- [ ] Are you entitled to a tax deduction? (see page 10)

When an employee leaves

If an employee stops working for you and you make some sort of final payment to them, this payment may qualify as an 'employment termination payment' (ETP). These payments were previously called 'eligible termination payments'.

To qualify as an ETP, your payment has to meet a number of requirements. These requirements changed on 1 July 2007. Also, different components of ETPs are taxed at different rates. However, there are no changes to the way tax applies to unused leave, redundancy and early retirement payments.

For more detailed information about ETPs, refer to *Employment termination payments – when an employee leaves* (NAT 71043).

To obtain a copy of this publication, refer to 'More information' at the end of this guide.

Super terms explained

Accumulation funds

This is a fund to which employers contribute regular payments. On retirement, the employee receives the accumulated contributions their employer has made, plus any additional contributions they may have made, plus interest (less management fees, taxes, etc).

Choice liability

The choice liability is the name for a charge an employer must pay if they have not offered a choice of fund to an eligible employee.

Concessional tax rate

Certain payments receive a tax benefit, generally up to a designated cap. For instance, employment termination payments are taxed at a *concessional tax rate* up to a cap of $140,000. This means that payments up to the cap are taxed at a lower rate than payments above the cap. In this example, the tax rate depends upon the age of the person being taxed.

Defined benefit funds

This is a fund into which employees pay whatever contribution rate is required to provide an employee with a 'defined benefit' when they retire. A 'defined benefit' may be a multiple of the employee's salary, a specified amount, or both. The minimum monthly or quarterly payment an employer makes to a defined benefit fund must be calculated by an actuary, and the employer must obtain a benefit certificate showing the 'notional employer contribution rate'.

Earnings base

The earnings base is usually an employee's ordinary time earnings, which generally means what they earn for their ordinary hours of work. An employer has to pay 9% of their employee's earning base into a super fund. From 30 June 2008, an employee's earnings base must always be based on their ordinary hours of work.

Eligible employees (for super contributions)

Eligible employees (including contractors paid principally for their labour) are those who should have 9% super contribution paid into a super fund by their employer, in addition to salary or wages. This generally includes employees who are aged between 18 and 70, are paid $450 (before tax) or more in a calendar month, and work full-time, part-time or on a casual basis.

Eligible employees (for choice of super fund)

Employees (including contractors paid principally for their labour) are eligible to choose their super fund if they are under federal awards, former state awards (now known as 'notional agreement preserving state awards) or covered by another award or agreement that doesn't require superannuation support. They cannot be employed under any state award or industrial agreement.

Employer fund

The employer makes contributions to this superannuation fund for an employee if the employee has not nominated or is not eligible to nominate a fund. It is commonly referred to as the employer's default fund.

Employment termination payments (ETPs)

Previously known as 'eligible termination payments', these are lump sum payments made by an employer to an employee as a result of the termination of employment or after the death of the person who was an employee.

Insurance requirements

With some exceptions, an employer fund must offer life insurance for members. As a general principle, the member should receive the minimum coverage.

Ordinary time earnings

Ordinary time earnings are the lesser of an employee's earning in respect of ordinary hours of work (including over-award payments, commissions, shift allowances and paid leave). This is used as a default earnings base if there are no other acceptable earnings bases relevant to a particular employee. Ordinary time earnings is the only allowable earnings base for super contributions after 1 July 2008.

Participating employer

A condition placed on an employer by a super fund, where the employer must agree to the fund's governing rules before their contributions will be accepted.

Personal super contribution

Personal contributions are contributions that your employee can pay into their superannuation fund after tax has been deducted from their normal salary or wage.

Salary or wages

Under the superannuation guarantee legislation, salary or wages are generally any periodical payment made to a person in return for work or services.

Standard choice form

The form employers must provide to employees who are eligible to choose their own super fund. New employees must be given this form within the first 28 days of starting.

Super benefit

A lump sum or pension paid to a retiree from their super fund.

Super contribution

A payment made by an employer to a super fund for an employee. The compulsory payment (charge percentage) is currently 9%, but a higher rate may be negotiated.

Superannuation guarantee

The minimum amount of superannuation that an employer has to pay for their employee. This amount is set out in the superannuation guarantee legislation. It is currently 9% of the employee's earning base.

Superannuation guarantee charge

This is a charge employers have to pay if they do not:

- provide superannuation at the 9% charge percentage level set out in the superannuation guarantee legislation, and
- pay all their contributions for all employees by the quarterly cut-off dates each year
- pay super into the super fund that an employee chooses
- offer all eligible employees a choice of super fund within 28 days of them starting work

Superannuation guarantee charge administration component

The administration component represents part of the Tax Office's cost of collecting the superannuation guarantee charge and distributing employee entitlements to superannuation funds. A fee of $20 is charged for each payment of the superannuation guarantee shortfall, for each employee.

Superannuation guarantee charge statement – quarterly

The form employers or their representatives complete and send to the Tax Office when they have to pay the superannuation guarantee charge.

Superannuation guarantee shortfall

This is the shortfall that employers have to make up by paying the superannuation guarantee charge if they do not pay any (or sufficient) superannuation contributions for each eligible employee.

Superannuation product identification number (SPIN)

A unique identifier super funds use to identify their products. Identify SPINs by using the SPIN search at **www.spindirectory.com.au** or by contacting the relevant super fund.

Super fund

A super fund may be a superannuation fund or a retirement savings account. Retirement savings accounts are offered by approved financial institutions. Just like complying super funds, they accept super contributions for account holders, and provide benefits upon retirement or death.

Transition to retirement measure

The transition to retirement measure allows employees to access their super benefits, once they reach their preservation age and without having to retire or leave their job.

More information

For more information about super:
- 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 28 64** to ask about choice of super fund
- phone us on **13 10 20** between 8.00am and 6.00pm, Monday to Friday, to speak to a tax officer
- phone our publications ordering service on **1300 720 092** for copies of our publications, or
- write to:
  PO Box 3578
  ALBURY NSW 2640

If you do not speak English well and want to talk to a 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**.

Publications

We are currently developing the following publications about super.

For employers

- *Super is about to change* (NAT 70705)
- *Employment termination payments – when an employee leaves* (NAT 71043)
- *Employment termination payments – transitional arrangements* (NAT 70644)

For individuals

- *Super – what you need to know* (NAT 71039)
- *Super and your retirement* (NAT 71040)