

13 October 2025

Ms Kirsten Fish
Second Commissioner
Law Design & Practice
Australian Taxation Office

By email: Kirsten.Fish@ato.gov.au

Dear Kirsten,

Tax administration issues regarding the superannuation guarantee charge and performers and entertainers

The Tax Institute writes to the Australian Taxation Office (**ATO**) to highlight some key areas of concern regarding the administration of the superannuation guarantee charge as it relates to the engagement of performers, entertainers and other service providers. We consider that the ongoing needs of taxpayers and their advisers in this area would greatly benefit from ATO guidance and support.

The concerns raised in our submission are based on feedback from our National Fringe Benefits Tax and Employment Taxes Technical Committee, with input from our National Superannuation Technical Committee. These Committees include legal professionals, tax agents, and other practitioners who manage these issues for their clients and engage with the ATO on their clients' behalf.

There is considerable uncertainty and a general lack of awareness regarding the operation of subsection 12(8) of the *Superannuation Guarantee Administration Act 1992* (Cth) (**SGAA**). Our overarching recommendation is that the ATO provide guidance to help clarify the operation of this provision in some practical and commonplace scenarios. Our detailed submission is contained in **Appendix A**.

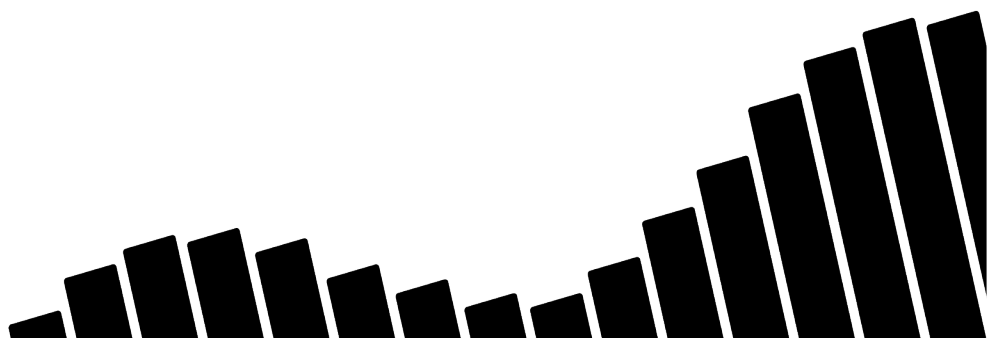
Our submission is intended to be a starting point for further discussion and consultation. We look forward to working with the ATO on the matters outlined in our submission. To arrange a workshop or to discuss any aspect of our submission, please contact our Tax Counsel, John Storey, on (03) 9603 2003.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system

Level 21, 60 Margaret Street
Sydney NSW 2000

T 1300 829 338
E tti@taxinstitute.com.au

taxinstitute.com.au



for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

Yours faithfully,

Julie Abdalla

Head of Tax & Legal

Tim Sandow

President

APPENDIX A

We have set out below for your consideration, our detailed comments and observations related to areas that we consider would benefit from further guidance from the ATO.

Superannuation guarantee for performers and presenters

The SGAA outlines specific categories of individuals who are considered to be employees for superannuation purposes, particularly in the context of various performance and service-related activities.

Subsection 12(8) of the SGAA deems individuals engaged in music, entertainment, sports and related services to be employees of the entity making the payment. This includes not only performers, but also those providing ancillary services related to these activities. This extended definition applies regardless of whether these individuals would otherwise be considered employees or contractors at law.

Subsection 12(8) of the SGAA is reproduced below:

(8) The following are employees for the purposes of this Act:

(a) a person who is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills is an employee of the person liable to make the payment;

(b) a person who is paid to provide services in connection with an activity referred to in paragraph (a) is an employee of the person liable to make the payment;

(c) a person who is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast is an employee of the person liable to make the payment.

Feedback from our members indicates that there is a lack of understanding among taxpayers regarding the application of the superannuation guarantee to payments made to performers and presenters. Many taxpayers are unaware of their obligations in this area, which is becoming increasingly relevant due to the expanding 'gig economy' and greater use of online services which mean more organisations are engaging individuals in circumstances where subsection 12(8) may potentially apply.

Recommendation

Set out below are eleven examples that illustrate the difficulty that tax advisers and their clients encounter with respect to the operation of subsection 12(8) of the SGAA, even in very simple and common scenarios. Clear guidance from the ATO is necessary regarding this issue and its operation in practical scenarios, particularly considering the growing incidence of these types of engagements.

In all the below examples, it should be assumed that the person being engaged is a natural person, rather than, a company, trust or other entity, and that superannuation is not otherwise payable under one of the other categories set out in section 12 of the SGAA.

Example 1: Social media influencer

Part A: A retailer pays an individual with a social media presence to promote their product through a series of social media posts.

Part B: The social media influencer pays an individual to create the posts that they can share.

Potential answers

Part A:

Recording the social media posts is either:

- a form of performance, the promotional activity being the exercise of artistic or other personal skills. Or, the social media post could be considered the making of a film or radio broadcast.

If so, this would cause the payments to be subject to superannuation.

- Alternatively, there is no performance involving the exercise of relevant skills – rather, the value is in the person's fame, and fame is not a skill as such. Further, posting on social media does not involve making a 'film' within the ordinary meaning of the term nor is the social media platform considered 'radio'.

This would mean that the payments would not be subject to superannuation.

Part B:

As for Part A for the social influencer.

For the additional person, similar to arguments raised regarding Part A, their services could constitute the making of a film and/or radio broadcast, but also could be services provided 'in connection with' the 'performance', if it is indeed considered to be a 'performance'.

The payments may or may not be subject to superannuation accordingly.

Example 2: Entertainer

A business hires an individual to attend a party for staff and their families, where they will create balloon animals and distribute them to the children.

Potential answers

The balloon artist is performing an act of entertainment that involves the exercise of their artistic skills, which may be subject to superannuation.

Alternatively, the making of balloon animals is not considered a performance or presentation as such, and/or it is not considered to involve the use of artistic skills or other relevant skills and is therefore not subject to superannuation.

Example 3: Exercise consultant

A business hires an individual instructor to conduct a Zumba dance class at its work premises for its employees. The class primarily aims to teach participants how to perform their own Zumba workouts at home.

Potential answers

The instructor could be performing and/or participating in the presentation of a dance or sport involving their physical skills, and therefore fees charged by the individual should be subject to superannuation guarantee contributions.

Alternatively, the instructor is not presenting or performing but rather is acting as a teacher. This assumes, Zumba is not a dance or a sport for these purposes.

Example 4: Continuing professional development consultant

A business hires an individual consultant to present continuing professional development courses to its employees. These are delivered both in person and virtually.

Potential answers

The consultant is presenting a display of technical knowledge, which involves the exercise of intellectual skills.

Separately, the consultant is making a film or radio broadcast to the extent that the session is shared virtually.

Each of the above, on its own, would make the payments subject to superannuation.

Alternatively, the consultant is not presenting a display as such, and the sharing of information virtually does not constitute the making of a film or radio broadcast, in which case it would not be subject to superannuation.

Example 5: Wellbeing consultant

A business hires an individual consultant to conduct a meditation class at its work premises for its employees.

Potential answers

The consultant is performing and/or presenting the meditation class, which is an activity similar to a sport, or a display that involves the exercise of physical and/or other personal skills, and is therefore subject to superannuation.

Alternatively, conducting a meditation class is not a performance or presentation as such; rather, it is guiding participants in an activity. In addition, the activity is neither a sport nor a display, and is therefore not subject to superannuation.

Example 6: Composer

An orchestral company engages a composer to create an orchestral score. The project includes composing and writing the score, as well as attending rehearsals and providing feedback to the musicians.

Potential answers

The composer provides services in connection with the performance of music, including the writing of the score and/or the provision of feedback at rehearsals, as both are necessary before the orchestral score can be performed. In which case it would be subject to superannuation.

Alternatively, the writing of a musical score occurs prior to any performance that may or may not follow, so it is not a service in connection with the performance of music. Rehearsals do not constitute a performance, so the provision of feedback at rehearsals is also prior to any performance of the music. These actions are therefore not 'in connection with' the ultimate performance and not subject to superannuation.

Example 7: Lighting technician

A lighting technician is engaged to support a particular theatre production. The project includes designing the lighting requirements, conducting testing during rehearsals and operating the lighting at the performances.

Potential answers

All the services provided by the technician are necessary for the theatre production to proceed and are therefore 'in connection' with that activity, which is the performance of a play and/or music, and therefore subject to superannuation.

Alternatively, the design and testing are not considered to be 'in connection' with the performance, because they are completed before any performance actually commences, so there should be no superannuation guarantee on those components. Whereas the operation of the lighting at the performances is in connection with the performance, so that component may be subject to superannuation.

Further alternative – if the services cannot be separated and are invoiced as a single item, the predominant service informs whether superannuation applies or not – this might be considered the operation of lighting at the performance, which may be subject to superannuation, or the preparation work (perhaps because that is likely to take more time) – which would not be 'in connection' with the performance and therefore not subject to superannuation.

Example 8: Guest speaker

An individual is invited to present at a conference about their learnings from past experiences. They bring along a supply of books they wrote to autograph and sell to attendees.

Potential answers

The presentation is an activity similar to that of entertainment or a display and involves the presenter exercising intellectual and other personal skills, which may be subject to superannuation.

Alternatively, the presentation of past experiences, although it might be entertaining, is not provided as entertainment or a display as such, but rather, for learning, so it is not subject to superannuation.

Example 9: Videographer

Part A: A couple engage a videographer to film their wedding.

Part B: A business engages a videographer to film a staff event.

Part C: A business engages a videographer to film a promotional video.

Potential answers

Parts A and B

The videographer is being paid to make a film in which case superannuation applies.

Alternatively, a video recording of any of these events does not constitute a 'film' as such as it is entirely for private use, in which case no superannuation applies.

Part C

As above for Parts A and B, but in addition, the videographer is performing services in connection with a 'promotional activity', therefore making it subject to superannuation.

Example 10: Security

A business engages personal security for its entertainment event.

Potential answers

Security is an important part of an entertainment event; hence, the security personnel may be said to be engaged to participate in the performance or presentation of the entertainment. Their participation is necessary for the safe running of the event. Failing that, they are engaged in connection with the entertainment activity, in which case superannuation applies.

Alternatively, security personnel do not actually perform or present, so superannuation does not apply under this category. Further, security is a completely separate activity from the performance or presentation, and the occurrence of the performance is not conditional on security, and is therefore not provided in connection with the performance or presentation, in which case superannuation does not apply.

Example 11: Promotional event

A person is hired to hand out samples at a promotional event.

Potential answers

Handing out pamphlets constitutes participating in the presentation of a promotional activity. Even if this were not the case, the handing out of the pamphlets could be seen to be in connection with the performance of the promotional activity. In either case, superannuation may apply.

Alternatively, simply handing out pamphlets does not constitute a performance or presentation. Further, it is too far removed from an activity to be in connection with any performance or presentation that is occurring. In which case, superannuation would not apply.