

Superannuation for contractors

Employers, should you be paying it, and contractors, should you be asking for it?

What is superannuation?

The superannuation guarantee system requires all employers to provide a minimum level of superannuation support for their employees. The prescribed minimum level of superannuation support is currently 9% of an employee's earnings base - this has applied since 1 July 2002. An employer is entitled to a tax deduction for contributions made to a complying superannuation fund, however, the contributions are only deductible for the year in which the contribution is made, and not deductible at all if paid after 28 July.

Who do I have to pay super for?

The superannuation guarantee scheme applies to all 'employers' in respect of their 'employees'. If you are an employee of your own company, this includes you too. For super purposes the ATO deems a range of additional relationships to be that of "employee" and "employer", e.g. company directors, professional entertainers, artists and sports persons.

What about contractors/freelancers?

In certain situations, a person who describes themselves as an 'independent contractor' may in fact be an 'employee' for superannuation guarantee purposes. **If a person who works under a contract wholly or principally for labour, then super must be paid for them.** The term 'labour' includes intellectual and artistic effort as well as physical work.

Is there anyone I DON'T have to pay super for?

Only if they fall into these categories (and a few other special cases)

- Workers employed through a Pty Ltd company, trust, partnerships
- Workers who are paid less than \$450 in a month
- Workers providing both equipment AND labour, if the labour component is less than 50% (that's REAL equipment, working from home on your own laptop doesn't count)
- Workers under 18 years of age who are working no more than 30 hours per week
- Workers paid to do private or domestic work for not more than 30 hours per week for a non-business employer, e.g. nannies and housekeepers

What happens if I don't make the required contributions?

You are at risk of being flagged for an ATO superannuation compliance audit. ATO audit activity can be triggered by a number of sophisticated data matching programs, or by contractors requesting an ATO private ruling in relation to whether they are entitled to superannuation contributions from your business as their employer. Once an audit commences, the ATO has the power to go back 5 years and issue amended superannuation guarantee assessments. The assessments will calculate the superannuation liability due for contractors for the period under review, and this liability will be due within 30 days of receiving the amended assessment. In addition, unpaid super can become the personal responsibility of the company's directors.

What's the big deal?

With our aging population, the ATO are increasing their focus on ensuring that all workers are contributing to super somehow. If they don't enforce compulsory super contributions now, the government will have even bigger issues to deal with in the long run. At the end of the day, super is there to benefit all of us, because who really wants to have to rely on the government pension when they retire?

What do I have to do to comply?

Super is calculated as 9% of gross payments made to workers (before GST for those GST registered). It is your choice as a business to decide if your existing contractor arrangements will have super paid 'on top' (extra 9% cost to your business) or whether existing rates will now be 'inclusive of super' (same cost to your business, worker gets 91% cash in hand, 9% paid direct to their super fund).

Did you know?

- Superannuation must be paid on bonuses and commissions (including performance and Christmas bonuses)
- To claim a deduction for super in 2011/12, all super contributions need to be paid by 30 June 2012 (AND cleared at the super fund's end). Don't leave it until the last day to make a contribution, as you then run the risk that the super fund won't process the payment in time at their end, and you lose your deduction. For cheque payments, allow a few weeks for the cheque to clear, for Bpay payments, allow about a week to be safe.
- Unpaid superannuation can become the personal responsibility of a company's directors.
- There are no exempt employers.
- It is not possible for an employer to 'contract out' of their superannuation guarantee obligations (this includes contractors who 'promise' to pay their own super). It is always the employer's responsibility.
- The employer must physically pay the money to the worker's chosen super fund, not to the worker directly.

To discuss the implications of how this affects your business in more detail, contact your Client Manager.

DISCLAIMER: This guide is not tax advice. Speak with a qualified accountant about your specific circumstances.