

Taxation Factsheet 3 – Sitting Fees Paid to Board or Committee Members

Overview

This fact sheet has been developed to explain the tax treatment of sitting fees paid to board or committee members.

Type of Board or Committee

It is necessary to determine the type of board or committee that sitting fees are being paid in relation to.

Statutory Office Holder

Department of Premier and Cabinet Circular PC016 – *Remuneration for Government Appointed Part-Time Boards and Committees (September 2016)* contains the SA government rules.

Where members are appointed to boards or committees established under an Act of Parliament or established by a Minister or legal instrument, the members should be paid as if they were regular employees. If a board member is required to remit board fees to a third party, such as their employer, a Pay As You Go (PAYG) withholding variation rate to nil can be applied for from the Australian Taxation Office (ATO). Board members required to remit their fees to their employer must provide written confirmation of this from the employer so the agency knows that the variation to nil applies. However, if a board member chooses to remit their board fees to a third party, such as a donation to a deductible gift recipient, PAYG tax must be withheld at the ordinary rate and the fee paid directly to the board member. As these are private arrangements, the agency is not responsible for paying the third party directly.

Advisory Committee Members

When a person is appointed as a member of an ad-hoc advisory committee in their capacity as an individual, then the terms of the contract must be examined before payment is made:

- > If the member is engaged as an independent contractor (contract for services), and the services are supplied as part of carrying on an enterprise, then the member must quote an Australian Business Number (ABN). If they do not, ABN withholding tax of 47% may apply. Goods & Services Tax (GST) may also apply if the person is registered for GST.
- > If the person is engaged under a contract of service, then they will be classified as an employee and sitting fees should be paid via payroll to enable appropriate PAYG tax to be withheld, and to ensure compliance with other associated employer obligations including superannuation.
- > If the member is neither a contractor nor employee, there is no need to withhold tax where the payment meets certain ATO tests (see below). These individuals will need to complete a [Consumer Sitting Fee and Reimbursement Claim Form](#) to claim sitting fees and other reimbursements.

Each appointment will need to be considered on a case-by-case basis to determine the true nature of the arrangement.

When to withhold PAYG

If a member is appointed in his/her individual capacity and meets the ATO tests of employee (below), PAYG must be withheld and payments should be made via payroll. An annual payment summary must also be provided to the member.

If the person does not meet the employee tests, i.e. is an independent contractor, volunteer or is engaged through a company, trust or partnership, PAYG must not be withheld unless they are required to quote an ABN.

When to apply the Superannuation Guarantee Contribution (SGC)

The Superannuation Guarantee Contribution (SGC) is applied if the member is appointed in his/her individual capacity, and is either:

- > an office holder (statutory appointment);
- > an employee (see below); or
- > an independent contractor, but paid under a contract principally for the provision of labour

If sitting fee payments are made to such a member of more than \$450 in one month, then a minimum level of superannuation support (currently 9.5%) is required to be paid to the member's complying superannuation fund. Refer ATO website for up to date [superannuation rates and thresholds](#).

The SGC is not applied if the member is not an employee, is engaged through a company, trust or partnership or is a volunteer.

From 1 July 2013, there is no upper age limit for making super guarantee contributions

When to apply GST to Sitting Fees

GST applies if the member is appointed as a representative for a non-government organisation (NGO), and the NGO is registered for GST.

GST applies if the member is engaged as an independent contractor, is carrying on an enterprise, and is registered for GST.

GST does not apply if the member is appointed in his/her individual capacity, and meets the test of an employee (see below), or is a statutory office holder, or is a volunteer.

If GST applies, your entity can claim an input tax credit if you hold a compliant tax invoice from the supplier.

Reimbursements paid to members

If the member is an employee or statutory office holder you can claim GST input tax credits for the reimbursement to the person under Division 111 of the A New Tax System (Goods & Services Tax) Act 1999. You will need to hold the tax invoice received by the person in order to claim the GST input tax credit.

If the member is an independent contractor, company, partnership or trust that is carrying on an enterprise and registered for GST, the reimbursement will generally fall within the contractor's normal business supplies. In this case, the contractor should include these costs in their tax invoice and not claim expenses as reimbursements.

If the member is an individual and neither an employee nor contractor, you can claim GST input tax credits for expenses to the extent that they are for official committee business, and you hold the tax invoice.

Employee or Contractor

There are a number of criteria used to help classify an individual is an employee or contractor. All the facts surrounding an appointment must be considered including appointment letters/contracts and actual practice.

Factors to consider include:

- > Control – does the payer exercise, or have the right to exercise, control over the manner in which the work is performed?
- > “Results” contracts – is the substance of a contract to achieve a specified result? Does the contract specify the services to be performed in return for an agreed payment? Or is the contract simply for the provision of labour?
- > Power to delegate – does the worker have unlimited power to delegate (with or without approval) or must they personally perform the services?
- > Risk – What is the level of risk exposure to the worker? *As Board members or representatives of Departmental Committees, risk is covered under the SA Government Insurance Scheme.*
- > Conditions surrounding appointment - considerations:
 - o Exclusivity or freedom to work for others;
 - o Payment with reference to hours of duty or completion of task;
 - o Provision of entitlements such as annual, sick and long service leave;
 - o reimbursement or allowances paid in respect of using worker’s own assets and materials;
 - o use of the payer’s equipment, assets and materials; and
 - o Payer discretion of task allocation and termination of engagement.

Acronyms

PAYG	Pay As You Go
ATO	Australian Taxation Office
ABN	Australian Business Number
GST	Goods and Services Tax
FBT	Fringe Benefits Tax
NGO	Non-government organisation
SGC	Superannuation Guarantee Contribution

References (open in Chrome)

[PC016 – Remuneration for Government Appointed Part-Time Boards and Committees](#)

[TR2002/21 Income Tax – PAYG Withholding from salary, wages, commissions, bonuses or allowances paid to office holders](#)

[Consumer Sitting Fee and Reimbursement Claim Form](#)

[Safety and Quality - Sitting Fees and Reimbursement Guidance](#)

[Volunteers and PAYG Withholding](#)

[Honorariums and Volunteers](#)

[A New Tax System \(Goods & Services Tax\) Act 1999 S.111](#)

[SGR2005/1 Superannuation guarantee: who is an employee?](#)

[Superannuation Guarantee \(Administration\) Act 1992](#)

[Key- Superannuation rates and thresholds - ATO](#)

More Information

Contact Taxation Services: email HealthTaxHelpdesk@sa.gov.au, or phone 8463 6776

Important Disclaimer

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