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ATO backs down on expensive change to superannuation

The lobbying efforts of the Chamber of Commerce and Industry WA and others, have resulted in the Australian Tax Office (the ATO) revising its decision to include regular overtime in the calculation of superannuation liability. For members who have employees working significant amounts of regular overtime, this is an important victory.

As previously advised, the ATO had issued a proposed draft ruling, whereby the definition of 'ordinary time earnings' would have been expanded to include regular overtime. Currently, overtime payments (including regular overtime) are excluded from the definition when calculating superannuation liability. Such a change would have resulted in significant increases in costs for employers, particularly for employers in industries where regular overtime is common.

CCI lobbied both the Government and the ATO urging reconsideration of the interpretation. In March 2009, CCI raised its concerns at a meeting with the ATO in Melbourne, also attended by Australian Chamber of Commerce and Industry and other employer organisations. At this meeting the ATO agreed to consider employer concerns before finalising the draft ruling.

The ATO has today released the final ruling, SGR 2009/2, revising its interpretation. From 1 July 2009, ordinary time earnings will be defined as the ordinary hours specified under the relevant award or agreement and will not include regular overtime hours.

For employees who are award or agreement free the definition is not as clear. Under the new ruling, the ordinary hours of work will be held to be the 'normal, regular, usual or customary hours' worked by the employee.

The changes will take effect from 1 July 2009. CCI urges members to review wording in current contracts and agreements to ensure they will not be liable for increased superannuation payments.

If members are seeking more information on the new Superannuation Guarantee Ruling, SGR 2009/2, please contact the Employee Relations Advice Centre on (08) 9365 7660 or email advice@cciwa.com or Marcia Kuhne on (08) 9365 7699 or marcia.kuhne@cciwa.com