

SUPERMATTERS

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Super laws for concessional contribution caps updated

Eligible individuals can now choose to nominate wages from certain employers to not be subject to the Superannuation Guarantee (SG) to avoid exceeding their annual concessions cap.

First announced in the 2018-19 Budget, the Treasury Laws Amendment (2018 Superannuation Measures No.1) Bill 2019 allows individuals, whose income exceeds \$263,157 and have multiple employers, to nominate wages from certain employers to not be subject to SG obligations.

Individuals with more than one employer, who expect that their compulsory super contributions will exceed the annual concessional contributions cap for a financial year, will be able to apply for an

exemption certificate to release some of their employers from their SG obligations. Individuals will still need to receive SG payments from at least one employer.

From 16 October 2019, eligible individuals can download an application form from the ATO. The application will need to be submitted at least 60 days before the start of the quarter in which you wish to receive the exemption. The lodgment period for the quarter commencing 1 January 2020 was extended up until and including 18 November 2019.

The application form provides the Commissioner of Taxation with the information required to make an assessment. This includes which employers the exemption certificate will apply to

and the quarter in the financial year for which the exemption is sought. Exemption certificates may be issued for multiple quarters within a financial year but cannot cover more than one financial year.

With an exemption certificate, an employer will not need to make SG contributions to avoid liability for the SG charge, however, it does not actively prevent the employer from making super contributions on behalf of the employee. The certificate does not change the employer's obligations under a workplace agreement or an employer's agreement with their super fund.

Employees will need to talk to their employers before making an application as this arrangement and any changes to payments will need to be negotiated.

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SMSF

Who is a 'related party' in an SMSF?

Self-managed super funds (SMSFs) have a number of investment restrictions which apply to transactions conducted within the fund.

One such restriction applies to transactions involving 'related parties' of the fund and 'relatives of members.' No one associated with the SMSF should obtain a present-day benefit from the fund's investments. The fund needs to meet the 'sole purpose test' of providing death or retirement benefits to the SMSF members or their dependents.



A breach to the investment restrictions may result in significant penalties, such as disqualification of a trustee and even prosecution.

The ATO considers a 'related party' as:

- All members of the fund.
- Associates of fund members, including;
 - Relatives of each member.
 - The business partners of each member.
 - Any spouse or child of those business partners.
 - Any company the member or their associates control or influence.
 - Any trust the member or their associate's control.
- Standard employer-sponsors, which are employers who contribute to your super fund for the benefit of a member under an arrangement between the employer and a trustee of the fund.
- Associates of standard employer-sponsors, which include business partners and companies or trusts the employer controls (either alone or with their other associates) and companies and trusts that control the employer.

Once a person or an entity is identified as a related party, then trustees can consider the compliance of the investment transactions between the SMSF and the related party.

Consequences of late SMSF annual returns

The ATO is taking a firm stance on lodgment duties for SMSF trustees, introducing a new SMSF status if obligations have not been met.

SMSFs that are overdue by two weeks on any annual returns and haven't requested a deferral, will now have their status on Super Fund Lookup (SFLU) changed to 'Regulation details removed'.

Introduced on 1 October 2019, the ATO is taking this approach where non-lodgment, combined with disengagement, indicates that the fund's retirement savings could be at risk. This status will remain until any overdue lodgments have been brought up to date.

By having a status of 'Regulation details removed', APRA funds won't roll over any member benefits to the SMSF and employers won't make any super guarantee (SG) contribution payments for members of the SMSF. While the fund's status is 'Regulation details removed', members should alert their employer to make any SG payments into the employer's default super fund or a fund of the member's choice.

On the first business day of each month, the new process will update SFLU depending on the situation:

- SMSF trustees who haven't lodged their SMSF annual return on time and are more than two weeks overdue, the ATO will change their SMSF regulation status to 'Regulation details removed' on SFLU.
- All overdue lodgments were received for an SMSF during the previous month, the ATO will update SFLU to reinstate the SMSF's 'complying' status.

SMSF trustees who don't think they can meet lodgment requirements should call, before the due date, to seek a deferral to lodge.

Proactive consolidation with ILBAs

Inactive low-balance accounts (ILBAs) are a new form of superannuation account classification that helps the ATO identify where balances need to be consolidated.

ILBAs are designed to protect accounts from fee erosion. The ATO will now have the authority to consolidate certain ATO-held super amounts without needing to be directed to do so by the individual. A superannuation account is considered an ILBA if all of the following criteria are met:

- No amount has been received by the fund for crediting to that account for an individual's benefit within the last 16 months.
- The account balance is less than \$6,000.
- A prescribed condition of release has not been met.
- The account is not a defined benefit account.
- There is no insurance on the account.
- The account is not held in a self-managed super fund (SMSF) or small Australian Prudential Regulation Authority (APRA) fund.

An account will not be considered an ILBA if, in the last 16 months, the individual has changed

investment options, insurance coverage, made or amended a binding beneficiary nomination, declared that they are not a member of an ILBA or there was an amount owed to the super provider on behalf of the individual.

Funds are required to identify ILBAs on 30 June and 31 December each year, then report and pay them to the ATO by the statement date.

- 31 October in the same year for accounts identified on 30 June.
- 30 April of the following year for accounts identified on 31 December.

Individuals that have an account that they do not want to be transferred to the ATO as an ILBA, can:

- Consolidate super accounts using ATO online services through myGov.
- Contact their super fund for more information. Or;
- Authorise their super fund to provide a written declaration to the ATO.

ILBA's were introduced in the Treasury Law Amendment (Protect Your Superannuation Package) Bill 2019 that came into effect on 1 July 2019 after first being announced in the 2018-19 Federal Budget.

