

SUPERMATTERS

SUPERANNUATION STRATEGIES FOR YOU AND YOUR BUSINESS

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Correct your super contributions with SG amnesty

Employers looking to correct past unpaid superannuation guarantee (SG) amounts now have a three-month window until 7 September 2020 to apply for SG amnesty.

The SG amnesty is a one-off opportunity for employers to correct their past mistakes in contributing to their employees' super funds on their behalf. Employers are encouraged to apply for the amnesty and get their obligations up to date. Up until early September, employers will be able to disclose, lodge and pay unpaid SG amounts owed to their employees without being subject to regular penalties.

Employers must declare and pay their SG shortfalls and interest charges to be eligible for the SG amnesty. Payments made during the amnesty can later be claimed as tax deductions.

The ATO has continued to be lenient regarding payment plans, which can be arranged to better accommodate for employers. Such payment plans can:

- Have flexible payment terms and amounts which the ATO will adjust as an employer's circumstances changes.
- Extend the payment plan beyond 7 September 2020. However, keep in mind that only payments made before or on 7 September 2020 will be tax-deductible.

Eligible employers who lodged a super guarantee charge statement between 24 May 2018 and 6 March 2020 will have these returns amended by the ATO and may receive a refund or credit. Employers can also disclose eligible SG shortfalls during the amnesty period for any quarter from 1

July 1992 and 31 March 2019. However, the shortfalls must not have been disclosed previously nor be subject to a current or previous audit.

Applications for the SG amnesty can be processed online through the following steps:

- Lodge an approved SG amnesty form with the ATO for each quarter by 7 September 2020.
- Check your amounts are correct and that there are no errors on the form.
- Complete the declaration to confirm that you are applying for the SG amnesty.

After correctly submitting your form, the ATO will contact you with which of your quarters are eligible for the SG amnesty.

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What happens if your SMSF becomes non-compliant?

Managing an SMSF has its benefits, but it also comes with compliance obligations that must be satisfied. Non-compliant SMSFs may be subject to a range of sanctions or penalties by the ATO.

Education direction

An SMSF trustee who does not meet compliance requirements can be given a written direction to undertake a course of education. This is designed to improve their ability to meet their obligations, reducing the risk of future non-compliance. Failure to comply with an education direction can result in an administrative penalty of 10 units.

Administrative penalties

SMSF trustees are liable to pay administrative penalties if they contravene provisions of the Superannuation Industry (Supervision) Act 1993 (SISA). This includes contraventions of borrowings, in-house assets, education direction, duty to notify of significant adverse events, and accounts and statements. The minimum penalty is \$1,050 and the maximum penalty is \$12,600.

Enforceable undertaking

SMSF trustees may be able to rectify non-compliance by providing a written commitment to an enforceable undertaking, which should include:

- A commitment to ending the non-compliance behaviour,
- What action will be taken as rectification,
- The designated time period to rectify the contravention,

- How and when the trustee will report the completion of rectification,
- Strategies employed to prevent future contraventions.

Disqualification

The ATO has the ability to disqualify individuals from acting as a trustee due to their non-compliance. This will take into account the severity of the contraventions and the likelihood of them reoccurring. Continuing to act as a trustee after disqualification is an offence that may result in further penalties.

Civil and criminal penalties

Civil and criminal penalties through court can apply when SMSF trustees contravene with provisions such as:

- The sole purpose test,
- Prohibition of avoidance schemes,
- Promotion of illegal early release schemes,
- Duty to notify the regulator of significant adverse events.

Non-compliance notice

SMSFs may be issued a notice of non-compliance when serious contravention of super laws have occurred. This causes the fund to remain non-compliant until a notice of compliance is received. For every year the fund remains non-complying, its assessable income is taxed at the highest marginal tax rate.

Winding up the fund

After a contravention has occurred, the trustee

may wind up the SMSF and roll over the remaining benefits to an Australian Prudential Regulation Authority (APRA) regulated fund. However, in some cases, the ATO may continue to issue the SMSF with a notice of non-compliance and/or apply other compliance measures.

Freezing the SMSF's assets

A trustee may be given a notice to freeze an SMSF's assets when it appears that conduct by the trustees or investment manager may adversely affect the interests of the beneficiaries. The notice may restrict the trustee or investment manager from acquiring assets and disposing of assets.

What to consider before topping up or starting a new pension

SMSF members facing investment losses due to the impacts of an economic recession may be considering topping up their pension account, or starting a new pension.

However, before taking action, SMSF members should be aware of the consequences this could have on their transfer balance cap. The transfer balance cap applies to the total amount of superannuation transferred into an individual's retirement phase.

Individuals with existing pensions worth \$1.6 million or more cannot start a new pension without exceeding the transfer balance cap, regardless of whether their current pension's value has been reduced due to investment losses.

Members who wish to top up their pension by rolling it back and adding funds before starting a new pension may be restricted, depending on the size of the debit they get when commuting their existing pension. If individuals wish to proceed with starting an additional pension, they will need to commute the excess balance and pay excess transfer balance tax.

Members who wish to top up or start a new pension must first identify how much cap space they currently have, and how much cap space they will have once they commute their pension. They should also consider whether credits from reversionary income streams over the next 12 months will affect their transfer balance account.

Transferring a business property into your SMSF

Given the current downturn in property prices, business owners may be rethinking their strategies in holding property.

One option to consider is transferring business real property into a self-managed super fund (SMSF). SMSF members can transfer business real property into their SMSF by using a combination of methods.

Cashing in your SMSF

Business owners can use the cash available in their SMSF to buy their business property at market value as a normal cash purchase. The property must first be valued by an independent and qualified party before this is allowable. SMSFs that do not have sufficient capital to do this may consider using their non-concessional contributions cap to cover the outstanding balance.

Limited recourse borrowing arrangement (LRBA)

In the event that you do not have enough cash in your SMSF to outright buy your business property, you can apply for a loan using an LRBA. An LRBA can be obtained through a third-party lender, including your own business. However, before applying for an LRBA, consider whether your SMSF will be able to maintain loan repayment fees on top of existing fees you may have.

CGT retirement concession

The CGT retirement concession allows business owners exemption from CGT on business assets up to \$500 000 over a lifetime. If you are over 55, there are no associated conditions, however, if you are under 55, then you must place the money into a superannuation fund to receive the exemption. This means that if you are under 55 and wishing to transfer a business real property into your SMSF, you can do so without incurring any CGT liability (up to \$500 000).