SWIM BETWEEN THE FLAGS

SMSF TRUSTEE PROGRAM

MODULE 4 OF 7

WITHDRAWING MONEY FROM SUPER

an initiative of spring FINANCIAL GROUP

WEALTHADVISER

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Letter from Wealth Adviser

Dear *Reader*

The goal of Wealth Adviser is to ensure that concise, informative financial education is available to everyone at no cost. Our educational material seeks to inform people of not only the benefits but also the potential risks and pitfalls of various strategies and investments.

Close to 600,000 self-managed super funds (SMSFs) are in operation according to the ATO and thousands of funds are being established each quarter. SMSFs are touted as the most flexible way for accumulating a retirement nest egg, offering significant investment choice and control. With this comes additional responsibilities for trustees, who are in control.

This free SMSF Trustee Program aims to equip trustees and financial services professionals with an awareness and knowledge of the relevant super rules and regulations. The program comprises seven modules, to be completed in sequential order via our Online Learning Centre. There is a short assessment at the end of each module to test your understanding. You must successfully complete each assessment in order to proceed to the next module.

The SMSF Trustee Program comprises the following modules:

1. Introduction to SMSFs
2. SMSF Trustee Responsibilities
3. Contributing to Superannuation
4. Withdrawing money from superannuation
5. SMSF Investment Rules
6. Taxation of SMSFs
7. Winding up an SMSF

By successfully completing the seven modules and online assessments you will receive a Certificate of Completion for the SMSF Trustee Program.

New SMSF trustees are required to sign a declaration that they understand the duties and responsibilities required of them according to the superannuation rules and regulations. A thorough working knowledge of the requirements is essential for trustees. An SMSF is not right for everyone and being informed is essential to maximising the opportunities from this type of super fund and minimising the risks of an SMSF.

This course is also suitable for SMSF trustees who have received an education direction and are required to complete an approved Australian Taxation Office (ATO) education course. To meet your education direction obligations, you are required to sign the Trustee Declaration (or re-sign this declaration if you have previously signed it) within 21 days of completing this course and forward the certificate of completion to the ATO by the date specified on your education direction.

We hope that this education course, is beneficial and of service to you. From there, once you have a general understanding of options available to you, we believe that it is important for you to seek personal advice that is appropriate to your situation. If you are an SMSF trustee, you should find a trusted adviser and work with them.

Best regards

Wealth Adviser

Contents

Learning outcomes

After completing this module, you should be able to:

- Outline the types of preservation statuses that applies to money in superannuation
- List the conditions of release to access superannuation
- Explain the taxation of lump sum payments from superannuation
- Summarise the income streams payable from superannuation
- Identify the options for payments from superannuation upon death
- Compare the available binding death benefit nominations

Preservation

Most of your super savings are preserved, or not accessible until you reach your preservation age, or meet one of the other prescribed situations contained in the super legislation. These are commonly referred to as a *condition of release*.

Where a trustee of a super fund is reasonably satisfied that a member has met a condition of release with no restrictions, the member's preserved benefits and restricted non-preserved benefits in the fund at that time become unrestricted non-preserved benefits (i.e. accessible).

There are three possible preservation statuses, depending on how and when the money came into the fund.

Preserved amounts

Preserved benefits in your super includes:

- most of contributions made into your super account
- rolled over preserved amounts, including eligible termination payment rollovers from 1 July 2004 to 30 June 2007
- directed termination payments from 1 July 2007
- all investment earnings generated from 1 July 1999.

You can generally access your preserved super when you retire or meet a condition of release such as severe financial hardship or a terminal medical condition.

Restricted non-preserved amounts

Restricted non-preserved super will only exist if your employer made super contributions on your behalf prior to 30 June 1999. Restricted non-preserved super includes:

- restricted non-preserved fixed dollar amounts as at 30 June 1999
- transferred restricted non-preserved amounts from another fund.

Note that investment earnings on any restricted non-preserved amounts are preserved.

You can generally access restricted non-preserved super when you leave the employer who made those contributions for you, depending on the super fund’s rules.

Unrestricted non-preserved super

Unrestricted non-preserved super benefits do not have any restrictions, so these amounts can be withdrawn at any time. This is commonly referred to as a *nil cashing restriction.* Unrestricted non-preserved amounts:

- can be taken in cash or commence an income stream
- are not indexed and any earnings on these benefits will be preserved
- when rolled over to another super fund, will continue to remain unrestricted non-preserved.

Priority of preservation components upon withdrawal

If you have satisfied a condition of release with a nil cashing restriction, all the benefits in your fund will become unrestricted non-preserved. However, if you have satisfied a condition of release with a cashing restriction, benefits will be paid from the fund in the following order:

1. unrestricted non-preserved benefits, then
2. restricted non-preserved benefits, then
3. preserved benefits.

Preservation age

Preservation age is the minimum retirement age at which an individual is able to access preserved benefits. The preservation age starts at age 55, however this gradually increases to age 60.

TABLE: Preservation age

Date of birth	Preservation age
Before 1 July 1960	55
From 1 July 1960 to 30 June 1961	56
From 1 July 1961 to 30 June 1962	57
From 1 July 1962 to 30 June 1963	58
From 1 July 1963 to 30 June 1964	59
On or after 1 July 1964	60

Conditions of release

A *condition of release* is satisfied upon the occurrence of a specific event.

When a condition of release occurs that has a nil cashing restrictions (full access), both preserved and restricted non-preserved benefits become unrestricted non-preserved benefits and are available for access by the member.

The following events will result in a condition of release with nil cashing restrictions:

- retirement on or after reaching preservation age
- attaining the age of 65
- a terminal medical condition
- death
- permanent incapacity,
- termination of gainful employment with a standard employer sponsor on or after 1 July 1997, where the preserved benefit at the time of termination is less than $200.
- being a lost member who is found, and the value of whose benefit in the fund, when released, is less than $200.

TABLE: Conditions of release and cashing restrictions

Condition of release	Nil Cashing restriction	Type of benefit
Age 65	Yes	• Lump sum, or • Income stream
Retirement	Yes	• Lump sum, or • Income stream
Permanent incapacity	Yes	• Lump sum, or • Income stream
Death	Yes	• Lump sum, or • Income stream
Termination of gainful employment	Depends on preservation status	Preserved benefits: Non-commutable life income stream or non-commutable life annuity Restricted and Unrestricted non-preserved benefits: lump sum or income stream
Terminal medical condition	Yes	• Lump sum, or • Income stream
Former temporary residents permanently departing Australia	Yes	Lump sum
Reaching preservation age	No	Includes a transition to retirement income stream
Temporary incapacity	No	Non-commutable income stream
Compassionate grounds	No	Single lump sum not exceeding the amount determined in writing by the Department of Human Services

Condition of release	Nil Cashing restriction	Type of benefit
Severe financial hardship	Depends on meeting particular circumstances	See section below titled "***Severe financial hardship***" for details on the benefits available and the associated conditions that must be met

Conditions of release with nil cashing restriction

The following events will result in super benefits becoming fully accessible.

Reaching age 65

Once you reach age 65 your super becomes unrestricted non-preserved. This generally means you will have unrestricted access to your super.

Retirement -- reached a preservation age that is less than age 60

For an individual that has attained their preservation age, but under age 60, *retirement* occurs when both the following are satisfied:

- an arrangement under which the member was gainfully employed has come to an end
- the trustee is reasonably satisfied that the person intends never to again become gainfully employed for ten hours or more each week.

Retirement -- reached age 60

In the case of a person who has attained age 60, *retirement* occurs when an arrangement under which the member was gainfully employed has come to an end, and either one of the following apply:

- the person attained this age on or before ending employment, or
- the trustee is reasonably satisfied the person intends to never again become gainfully employed

Permanent incapacity

If a member has ceased gainful employment due to ill health and is unlikely to work again in a job for which they are reasonably qualified by education, training or experience, this constitutes permanent incapacity (disablement) and a full condition of release applies. Hence, nil cashing restrictions would apply to this member's benefits.

To be reasonably satisfied of meeting this definition a trustee will usually request medical evidence in the form of two doctors' certificates.

Death

The death of a member is a full condition of release, resulting in all the deceased's remaining super benefits becoming re-classified as unrestricted non-preserved. These benefits must be distributed to beneficiaries as soon as practicable after death in accordance with the super rules and the fund's trust deed.

Termination of gainful employment (restricted non-preserved amounts)

There are no cashing restrictions for restricted non-preserved benefits when a member terminates gainful employment with an employer who had, or any of whose associates had, at any time, contributed to that super fund.

Terminal medical condition

Since 1 July 2007 a *terminal medical condition* exists, allowing for a nil cashing restriction, if the following criteria are met:

- two registered medical practitioners have certified, jointly or separately, that the individual suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period that ends not more than 24 months after the date of certification
- at least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the person
- for each of the certificates, the certification period has not ended.

Temporary resident leaving the country:

Eligible temporary resident visa holders who permanently leave Australia can apply to the ATO to have accumulated super benefits paid out.

Conditions of release with cashing restrictions

Transition to retirement

If you reach your preservation age, but have not retired, you can access your super as a regular income stream as a *transition to retirement* income stream. This income stream cannot be converted to a lump sum (*commuted)* until you meet the definition of retirement or reach age 65, thereby satisfying a nil cashing restriction.

Temporary incapacity

The release of funds to cater for *temporary incapacity* is allowed under the super rules as a non-commutable income stream. Temporary incapacity means physical or mental ill-health that caused the member to cease gainful employment but does not constitute permanent incapacity.

The amount of super released under temporary incapacity must be taken as an income stream (with specific restrictions) cashed from the regulated super fund for:

- the purpose of continuing (in full or part) the gain or reward which the member was receiving before the temporary incapacity
- a period not exceeding the period of incapacity from employment of the kind engaged in immediately before the temporary incapacity.

Compassionate grounds

A member of a fund can apply to the Department of Human Services for a determination to release their preserved benefits, or restricted non-preserved benefits, in full or part due to compassionate reasons. The Department of Human Services should be satisfied that you do not have the financial capacity to meet an expense arising from grounds such as:

- payment on a loan that is required to prevent foreclosure of a mortgage on a principal residence
- to cover expenses in relation to a dependant's death, funeral or burial
- to pay for medical treatment, medical transport, or medical related modifications to the person's principal home or vehicle for the member or a dependant.

Although the Department of Human Services must be satisfied that an application meets the criteria for early release of super, the final decision to pay out the benefit must be made by the trustee of the super fund.

Severe financial hardship:

If the member satisfies one of the following objective tests a limited amount of money can be released under the *severe financial hardship* provisions as follows:

Test	Cashing restriction
The member has been receiving Commonwealth income support benefits (excluding any Austudy payment and youth allowance paid to a full-time student) for a continuous 26 weeks and satisfies the trustee that he or she cannot meet reasonable and immediate family living expenses	The amount that can be released under the severe financial hardship test is limited to a gross single lump sum between $1,000 and $10,000 in any year (unless the amount in the fund is less than $1,000 then the full amount can be released).
The member has reached preservation age plus 39 weeks and since reaching preservation age has received Commonwealth income support benefits for a cumulative period of 39 weeks; and is not gainfully employed full or part time (i.e. not working for 10 or more hours per week) on the date of application.	Nil - lump sum or income stream benefit

Dependent upon the taxation components of this amount *and age of member*, tax may be payable to result in a reduced net amount.

Paying a lump sum or income stream

Subject to the provisions of a funds trust deed, where a member has satisfied a condition of release, the payment of a lump sum benefit and/or income stream can be made.

Payment of lump sum benefit- in-specie

Trustees are able to transfer assets to members in the form of an in-specie lump sum, so long as the trust deed permits.

However, before transferring an asset to a member as an in-specie benefit payment, the trustee will be required to value the assets at its current market value. This ensures the fund will have complied with the non-arm's length rules and will allow the trustee to calculate the tax components of the payment and withhold the correct amount of tax (if applicable).

Where a trustee transfers an asset to a member of the fund as an in-specie benefit payment, the transfer may trigger a capital gains event, and so capital gains tax (CGT) maybe payable by the fund.

The transfer of an asset to a member as an in-specie benefit payment may also trigger a stamp duty liability for the individual member depending on the type of asset being transferred.

Where the asset is used in a business, such as a commercial property, GST may also apply to the disposal.

Taxation of lump sum withdrawals from super

You may have to pay tax when you withdraw a lump sum benefit from super, based upon your age, how the benefit is paid to you and the taxation components of the benefit (the types of contributions that have been paid into the fund). The fund will normally deduct any tax before paying the benefit to the member.

The benefit generally comprises a tax-free and taxable component. The amount withdrawn will be proportionately split between the tax-free and taxable components.

TIP

Amounts withdrawn from age 60 generally are tax-free. If you cash out a lump sum benefit before age 60, tax may apply.

TABLE: Taxation of lump sums withdrawn from super - 2015/16 and 2016/17 income years

Age	Component of super benefit	Maximum tax rate
Age 60 and above	Taxable	Nil
Age 60 and above	Tax-free	Nil
Preservation age to age 59	Taxable	No tax up to $195,000** (low rate cap) 15%* on balance
Preservation age to age 59	Tax-free	Nil
Below preservation age	Taxable	20%*
Below preservation age	Tax-free	Nil

*Plus Medicare Levy. The additional temporary Budget Repair Levy may also apply if the member's income is over $180,000 (applicable for 2014/15, 2015/16, 2016/17 income years).

**The $195,000 low rate cap is indexed annually in line with Average Weekly Ordinary Time Earnings 'AWOTE'. This is a lifetime limit.

Note: Different taxation rates to the above apply in the following circumstances:

- the amount withdrawn contains an untaxed element (a higher rate of tax applies as this component arises from contributions that have not incurred contributions tax into super; commonly from a government public sector super scheme)
- death benefits
- payments received upon terminal medical conditions
- disability super benefits.

Income streams payable from super

When you meet a condition of release, usually retirement at a certain age, you can access your super benefits as a lump sum or income stream (commonly referred to as a super pension). In addition, you may be eligible to start a transition-to-retirement income stream (TTR/TRIS) before you retire; provided you have reached your preservation age.

Types of income streams payable

Two types of income streams can be commenced from a super fund:

1. *Account based* income streams - assets supporting the income stream are directly attributable to the member and the member's account balance rises/falls as the market value of the assets change which can be paid by all types of funds. Minimum income payments are prescribed by the super rules.

2. *Non-account based* income streams - do not have an account balance attributable to the member. They include immediate annuities which are payable for a fixed term or for life. SMSFs are not allowed to pay non-account based income streams, however the member's funds can be used to purchase an annuity from a life insurance company.

Taxation of payments from super income streams

No tax is payable on the investment earnings of those assets allocated to funding your income stream. However, depending on your age, you may pay tax in the income year payments are received.

Your income stream balance is made up of two components - the taxable component and the tax-free component. As their names suggest, the taxable component attracts tax, while the tax-free component doesn't. The amount of tax applied to the taxable component depends on your age. The proportion of these two components is calculated when you start your income stream. This fixed proportion then applies to each income payment you receive.

Superannuation Reform

On 29 November 2016, The Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 received royal assent and is now law.

From 1 July 2017, the tax-exempt status of income from assets supporting Transition to Retirement Income Streams (TRIS) will be removed, irrespective of when the TRIS commenced. Earnings from assets supporting transition to retirement income streams will now be taxed concessionally at 15 per cent.

TIP

Once you turn age 60 income received from your income stream is tax-free.

Taxation of income received from an income stream - 2015/2016 and 2016/2017 income years

Age	Component of super benefit	Maximum tax rate
60 and above	Taxable	Nil
60 and above	Tax-free	Nil
Preservation age to 59	Taxable	Marginal tax rate* Less 15% income stream offset
Preservation age to 59	Tax-free	Nil
Below preservation age	Taxable	Marginal tax rate*
Below preservation age	Tax-free	Nil

*Plus Medicare Levy. The additional temporary budget repair levy may apply from 1 July 2014 to 30 June 2017

Note: There are different taxation rates that apply for income streams received in the following circumstances:

- the income stream contains an untaxed element (in which case higher rates of taxation would apply)
- an income stream paid as a result of death
- as a result of disability.

Payments from super upon death

Upon death, your super benefit, including any insurance benefit, must be cashed from the fund. It is usually paid to your dependant(s) or your legal personal representative.

Super does not automatically form part of your estate, but you could choose to implement a binding death benefit nomination for your death benefit to be paid to your legal personal representative, if the fund's trust deed allows and if appropriate for your situation. If you do not have any dependants, the death benefit will be paid to your estate and will be dealt with according to your will. If you do not have a valid will, however, the laws of intestacy will apply. These are the statutory rules for those who die without a will, and define how an estate will be distributed in such circumstances.

This focus on dependence is because the purpose of super is to provide for fund members and their dependants, either in retirement or upon the death of a member. Hence, individuals who are non-dependants, such as adult children are required to pay tax on receipt of death benefits.

If a member dies on or after 1 July 2007, a super death benefit may only be paid in the form of one of the following:

- If the recipient is a dependant of the deceased, the death benefit can be paid as a lump sum or income stream. The income stream can be new or a continuation of an existing income stream.
- If the recipient is not a dependant of the deceased, the death benefit must be paid as a lump sum.

An income stream paid as a result of death to an individual under age 25 must cease once that individual reaches age 25 (unless a disability exists). The income stream must be cashed in as a tax-free super lump sum at that point.

Who is a dependant?

There are some differences in the definition of a dependant under the super rules and for tax purposes as shown in the table below.

The super rules determine who can receive a super death benefit. The tax definition determines how this benefit will then be taxed.

TABLE: Definition of dependant– super rules versus tax legislation

Dependant	Super rules	Tax-free
Spouse (married, de facto, or same-sex)	Yes	Yes
Former spouse	No	Yes
Child under age 18	Yes	Yes
Child aged 18 or over	Yes	No
Financial dependant (including dependant adult child)	Yes (full or partial)	Yes (full)
Interdependent relationship*	Yes	Yes
Individual who receives a super lump sum because of the death of another person who is a member of the Australian Defence Force or police force (who is a non-dependant)	No	Yes

*An interdependent relationship is defined as one where you share a close personal relationship, live together and one or each of you provides the other financial support and/or domestic support and personal care.

Taxation of death benefits

The tax-free component of a super benefit will always be received tax-free regardless of who it is paid to.

Note - there may be additional tax implications if there are insurance proceeds.

TABLE – Taxation of super death benefits

Taxation of super death benefits – Paid to a dependant – Taxed element

Age of deceased at time of death	Age of recipient	Type of death benefit	Maximum tax rate
Any age	Any age	Lump sum	Nil
Age 60 and above	Any age	Income stream	Nil
Below age 60	Age 60 and above	Income stream	Nil
Below age 60	Below age 60	Income stream	Marginal tax rate* Less 15% income stream offset

TABLE – Taxation of super death benefits – Paid to a non-dependant – Taxed element

Age of deceased at time of death	Age of recipient	Type of death benefit	Maximum tax rate
Any age	Any age	Lump sum	15%
Any age	Any age	Income stream	Not permitted from 1 July 2007. Death benefit income streams commenced prior to this date will be taxed in the same manner as if to a dependant

*Plus Medicare Levy. The additional temporary budget repair levy may apply from 1 July 2014 to 30 June 2017

NOTE - the above summary does not include tax rates for an untaxed element, in which case different rates of taxation would apply.

Death benefit nominations

The payment of a death benefit is ultimately a matter of trustee discretion, subject to the payment standards and the governing rules of the fund.

Non-binding death benefit nomination

If the trust deed allows, an SMSF may permit members to make death benefit nominations which are non-binding. In such cases, members simply provide trustees with guidance regarding their preferred death benefit recipients, with trustees making the eventual decision in the light of all the relevant circumstances.

Binding death benefit nomination

You are able to direct how your SMSF death benefits are to be paid after your death, so long as this is allowed in the trust deed. This direction is called a *binding death benefit nomination*.

A binding death benefit nomination is a written direction to the trustee that directs the trustee to pay your death benefits to certain dependants and/or the legal personal representative in the proportions set out therein in the event of your death. For SMSFs, the nomination is valid until it is altered or revoked (which is different to other funds, whereby the nomination must be updated every three years to remain valid).

If the binding death benefit nomination is valid and in effect at the date your death, the trustee *must* pay your SMSF monies to the beneficiaries nominated in the proportions set out in the nomination.

Learning check

Below is a repeat of the learning outcomes. This lists the key areas developed in this module and is designed to help identify gaps in your knowledge, which you may choose to seek further guidance on.

After completing this module, you should be able to:

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- List the conditions of release to access superannuation
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Readers Notes

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We provide a balanced approach to investing between property and shares; plus considerable expertise in Self-Managed Superannuation Funds and wealth creation.

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